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**Supreme Court of the United States**

**OCTOBER TERM, 1957**

**No.** ~~8-3~~ 40

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**TERRITORY OF ALASKA, PETITIONER,**

*vs.*

**AMERICAN CAN COMPANY, FIDALGO ISLAND  
PACKING COMPANY, LIBBY, McNEILL & LIBBY,  
INC., ET AL.**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

**PETITION FOR CERTIORARI FILED MARCH 4, 1958  
CERTIORARI GRANTED APRIL 7, 1958**

No. 15070

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**United States**  
**Court of Appeals**  
**For the Ninth Circuit**

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**TERRITORY OF ALASKA,**

**Appellant,**

**vs.**

**AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
McNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
CO., P. E. HARRIS COMPANY, INC., PA-  
CIFIC & ARCTIC RAILWAY & NAVIGA-  
TION CO., and OCEANIC FISHERIES CO.,**

**Appellees.**

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**Transcript of Record**

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**Appeal from the District Court for the  
District of Alaska, Division Number One**



No. 15070

United States

Department of Agriculture

For the Land Office

TERRITORY OF ALASKA

Alaska

AMERICAN OIL COMPANY, BID  
IRLAND PACKING COMPANY, IN  
MILLER & LIBBY, INC. STATE P  
THE COMPANY, NEW ENGLAND  
CO. P. H. HARRIS COMPANY, INC.  
TIC & ALBERT RAILWAY & NAT  
TION CO. AND OILFIELD FISHING

Alaska

Department of Agriculture

Special Agent in Charge, Bureau of Land Management  
Department of Agriculture, Division of Land Management

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[Clark's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## **COUNSEL OF RECORD**

### **For Appellant:**

**J. GERALD WILLIAMS,**  
Territorial Attorney General;

**HENRY J. CAMAROT,**  
Assistant Attorney General;

**EDWARD A. MERDES,**  
Assistant Attorney General;  
Box 2170 Juneau, Alaska.

### **For Appellees:**

**H. L. FAULKNER,**  
350 Mills Tower,  
San Francisco 4, California;

**FAULKNER, BANFIELD & BOOCHEVER,**  
Box 1121 Juneau, Alaska;

**W. C. ARNOLD,**  
200 Colman Building,  
Seattle 4, Washington;

In Causes Numbered:  
7278-A, 7279-A, 7300-A and 7302-A

**R. E. ROBERTSON,**  
Box 1211—Juneau, Alaska.

In Causes Numbered:  
7280-A, 7281-A, 7301-A and 7303-A



In the United States District Court for the District of  
Alaska, Division Number One, at Juneau

Civil Action No. 7278-a

**TERRITORY OF ALASKA,**

**Plaintiff,**

**vs.**

**AMERICAN CAN COMPANY, a Corporation,**  
**Defendant.**

**COMPLAINT**

Comes now the plaintiff, Territory of Alaska, and  
for its cause of action against the defendant above  
named alleges:

**I.**

That the Territory of Alaska is a sovereign in-  
corporated territory, organized under the laws of  
the United States.

**II.**

That the defendant is a corporation organized  
under the laws of the State of New Jersey.

**III.**

That the said defendant, between the years 1949  
and 1952, inclusive, had certain taxable real and  
personal property within the Territory of Alaska,  
the full and true value being as follows:

1949 .....	\$1,592,838
1950 .....	1,665,950
1951 .....	1,478,199
1952 .....	2,391,058

## IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1949 through and including 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$71,280.45, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

## V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$15,019.64, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) Interest on \$71,280.45 at the same rate from and after March 31, 1955, until paid.

## VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$86,300.09, together with interest at 6% per annum on the sum of \$71,280.45 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$86,300.09, with interest on \$71,280.45 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 9th day of April, 1955.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General.

Duly Verified.

[Endorsed]: Filed April 9, 1955.

[Title of District Court and Cause.]

Civil Action File No. 7278-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Comes Now American Can Company, a corporation, through its attorneys, Faulkner, Banfield & Boochever, and moves the Court to dismiss the plaintiff's complaint in the above-entitled cause upon the following grounds:

(1) That the complaint does not state a claim against the defendant upon which relief can be granted.

(2) That the action was not brought within the time required by law.

Dated at Juneau, Alaska, this 29th day of April, 1955.

**FAULKNER, BANFIELD &  
BOOCHEVER,**

By /s/ H. L. FAULKNER,  
Attorneys for Defendant.

Receipt of Copy Acknowledged.

[Endorsed]: Filed April 29, 1955.



[Title of District Court and Cause.]

Civil Action File No. 7278-A

**NOTICE OF MOTION; MOTION (1) TO  
STRIKE DEFENDANT'S MOTION TO  
DISMISS, AND (2) TO REQUIRE DE-  
FENDANT TO ANSWER COMPLAINT**

**Notice of Motion**

**To: H. L. Faulkner, Attorney for Defendant:**

Please take notice that on the 12th day of May, 1955, at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned will move the Court, in the Federal Building, Juneau, Alaska, for an order (1) striking the motion to dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within 10 days thereafter.

**Motion (1) to Strike Defendant's Motion to Dis-  
miss and, (2) to Require Defendant to Answer  
the Complaint**

Comes now the plaintiff through counsel in the above-entitled cause and moves this honorable Court to strike defendant's motion to dismiss on file herein, and to order defendant to file an answer to the plaintiff's complaint within 10 days after the hearing of this motion, for the following reasons:

1. That defendant's motion to dismiss fails to state the grounds therefore with particularity as is required by Rule 7(b), Federal Rules of Civil Procedure.



2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the motion to dismiss is a dilatory pleading.

Wherefore, plaintiff moves that an order be entered striking defendant's motion to dismiss and directing the said defendant to file an answer within 10 days after the Court's action herein.

J. GERALD WILLIAMS,  
Attorney General;

By /s/ HENRY J. CAMAROT,  
Assistant Attorney General,  
Attorney for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed May 5, 1955.

In the United States District Court for the District  
of Alaska, Division Number One, at Juneau  
Civil Action No. 7279-A

TERRITORY OF ALASKA,

Plaintiff,

vs.

FIDALGO ISLAND PACKING COMPANY, a  
Corporation,

Defendant.

### COMPLAINT

Comes now the plaintiff, Territory of Alaska, and for its cause of action against the defendant above named alleges:

I.

That the Territory of Alaska is a sovereign incorporated territory, organized under the laws of the United States.

II.

That the defendant is a corporation organized under the laws of the State of Maine.

III.

That the said defendant, between the years 1949 and 1952, inclusive, had certain taxable real and personal property within the Territory of Alaska, the full and true value being as follows:

1949 .....	\$158,246
1950 .....	158,046
1951 .....	158,046
1952 .....	158,046

IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1949 through and including 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$6,323.84, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and

there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$1,391.43, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$6,323.84 at the same rate from and after March 31, 1955, until paid.

#### VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$7,715.27, together with interest at 6% per annum on the sum of \$6,323.84 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$7,715.27, with interest on \$6,323.84 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 9th day of April, 1955.

J. GERALD WILLIAMS,  
Attorney General;

By /s/ HENRY J. CAMAROT,  
Assistant Attorney General.

Duly verified.

[Endorsed]: Filed April 9, 1955.

---

[Title of District Court and Cause.]

Civil Action File No. 7279-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Comes Now Fidalgo Island Packing Company, a corporation, through its attorneys, Faulkner, Banfield & Boochever, and moves the court to dismiss the plaintiff's complaint in the above-entitled cause upon the following grounds:

(1) That the complaint does not state a claim against the defendant upon which relief can be granted.



(2) That the action was not brought within the time required by law.

Dated at Juneau, Alaska, this 29th day of April, 1955.

/s/ W. C. ARNOLD,

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 29, 1955.

---

[Title of District Court and Cause.]

Civil Action File No. 7279-A

NOTICE OF MOTION: MOTION (1) TO STRIKE DEFENDANT'S MOTION TO DISMISS, AND (2) TO REQUIRE DEFENDANT TO ANSWER COMPLAINT

Notice of Motion

To: H. L. Faulkner, Attorney for Defendant.

Please take notice that on the 12th day of May, 1955, at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned will move the court, in the Federal Building, Juneau, Alaska, for an order (1) striking the motion to dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within 10 days thereafter.



**Motion (1) to Strike Defendant's Motion to Dismiss  
and, (2) to Require Defendant to Answer the  
Complaint**

— Comes now the plaintiff through counsel in the above-entitled cause and moves this honorable court to strike defendant's motion to dismiss on file herein, and to order defendant to file an answer to the plaintiff's complaint within 10 days after the hearing of this motion, for the following reasons:

1. That defendant's motion to dismiss fails to state the grounds therefore with particularity as is required by Rule 7 (b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the motion to dismiss is a dilatory pleading.

Wherefore, plaintiff moves that an order be entered striking defendant's motion to dismiss and directing the said defendant to file an answer within 10 days after the Court's action herein.

**J. GERALD WILLIAMS,  
Attorney General;**

**By /s/ HENRY J. CAMAROT,  
Assistant Attorney General,  
Attorney for Plaintiff.**

**Receipt of copy acknowledged.**

**[Endorsed]: Filed May 5, 1955.**

In the United States District Court for the District  
of Alaska, Division Number One, at Juneau

Civil Action No. 7280-a

**TERRITORY OF ALASKA,**

Plaintiff,

vs.

**LIBBY, McNEILL & LIBBY, INC., a Corpora-  
tion,**

Defendant.

### COMPLAINT

Comes now the plaintiff, Territory of Alaska, and  
for its cause of action against the defendant above  
named alleges:

#### I.

That the Territory of Alaska is a sovereign in-  
corporated territory, organized under the laws of  
the United States.

#### II.

That the defendant is a corporation organized  
under the laws of the State of Maine.

#### III.

That the said defendant, between the years 1949  
and 1952, inclusive, had certain taxable real and  
personal property within the Territory of Alaska,  
the full and true value being as follows:

1949 .....	\$770,481
1950 .....	829,757
1951 .....	790,460
1952 .....	780,569

IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1949 through and including 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$31,712.67, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$6,979.49, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$31,712.67 at the same rate from and after March 31, 1955, until paid.

VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$38,692.16, together with interest at 6% per annum on the sum of \$31,712.67 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$38,692.16, with interest on \$31,712.67 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 9th day of April, 1955.

J. GERALD WILLIAMS,  
Attorney General;

By /s/ HENRY J. CAMAROT,  
Assistant Attorney General.

Duly verified.

[Endorsed]: Filed April 9, 1955.



[Title of District Court and Cause.]

Civil Action No. 7280-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant moves the Court to dismiss Plaintiff's Complaint because (a) it fails to state a claim against defendant upon which relief can be granted and (b) the action was not commenced within the time limited or required by law.

Dated at Juneau, Alaska, April 29, 1955.

**W. C. ARNOLD, and  
ROBERTSON, MONAGLE &  
EASTAUGH,**

By /s/ **R. E. ROBERTSON,**  
Attorneys for Defendant  
Libby, McNeill & Libby.

Receipt of copy acknowledged.

[Endorsed]: Filed April 29, 1955.



[Title of District Court and Cause.]

Civil Action No. 7280-A

**NOTICE OF MOTION: MOTION (1) TO  
STRIKE DEFENDANT'S MOTION TO  
DISMISS, AND (2) TO REQUIRE DE-  
FENDANT TO ANSWER COMPLAINT**

**Notice of Motion**

**To: R. E. Robertson, Attorney for Defendant.**

Please take notice that on the 12th day of May, 1955, at 10:00 a.m. or as soon thereafter as a counsel may be heard, the undersigned will move the court, in the Federal Building, Juneau, Alaska, for an order (1) striking the motion to dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within 10 days thereafter.

**Motion (1) to Strike Defendant's Motion to Dis-  
miss and, (2) to Require Defendant to Answer  
the Complaint**

Comes now the plaintiff through counsel in the above-entitled cause and moves this honorable court to strike defendant's motion to dismiss on file herein, and to order defendant to file an answer to the plaintiff's complaint within 10 days after the hearing of this motion, for the following reasons:

1. That defendant's motion to dismiss fails to state the grounds therefore with particularity as is required by Rule 7 (b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the motion to dismiss is a dilatory pleading.

Wherefore, plaintiff moves that an order be entered striking defendant's motion to dismiss and directing the said defendant to file an answer within 10 days after the Court's action herein.

**J. GERALD WILLIAMS,**

Attorney General;

By /s/ **HENRY J. CAMAROT,**

Assistant Attorney General,

Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed May 5, 1955.

---

In the United States District Court for the District  
of Alaska Division Number One, at Juneau  
Civil Action No. 7281-A

**TERRITORY OF ALASKA,**

Plaintiff,

vs.

**NAKAT PACKING COMPANY, a Corporation,**

Defendant,

**COMPLAINT**

Comes now the plaintiff, Territory of Alaska, and for its cause of action against the defendant above named alleges:

**I.**

That the Territory of Alaska is a sovereign incorporated territory, organized under the laws of the United States.

**II.**

That the defendant is a corporation organized under the laws of the State of New York.

**III.**

That the said defendant, between the years 1949 and 1952, inclusive, had certain taxable real and personal property within the Territory of Alaska, the full and true value being as follows:

1949 .....	\$838,070
1950 .....	841,573
1951 .....	838,110
1952 .....	853,440

**IV.**

That by reason of the fact that this property was in the Territory of Alaska during the years 1949 through and including 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$33,711.93, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

**V.**

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there

is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$7,403.83, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$33,711.93 at the same rate from and after March 31, 1955, until paid.

## VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$41,115.76, together with interest at 6% per annum on the sum of \$33,711.93 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$41,115.76, with interest on \$33,711.93 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the



sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 9th day of April, 1955.

J. GERALD WILLIAMS,  
Attorney General;

By /s/ HENRY J. CAMAROT,  
Assistant Attorney General.

Duly verified.

[Endorsed]: Filed April 9, 1955.

---

[Title of District Court and Cause.]

Civil Action No. 7281-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant moves the Court to dismiss Plaintiff's Complaint because (a) it fails to state a claim against defendant upon which relief can be granted and (b) the action was not commenced within the time limited or required by law.

Dated at Juneau, Alaska, April 29, 1955.

W. C. ARNOLD, and  
ROBERTSON, MONAGLE &  
EASTAUGH,

By /s/ R. E. ROBERTSON,  
Attorneys for the Nakat  
Packing Corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed April 29, 1955.

---

[Title of District Court and Cause.]

Civil Action No. 7281-A

NOTICE OF MOTION: MOTION (1) TO  
STRIKE DEFENDANT'S MOTION TO  
DISMISS, AND (2) TO REQUIRE DE-  
FENDANT TO ANSWER COMPLAINT

Notice of Motion

To: R. E. Robertson, Attorney for Defendant.

Please take notice that on the 12th day of May, 1955, at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned will move the court, in the Federal Building, Juneau, Alaska, for an order (1) striking the motion to dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within 10 days thereafter.

**Motion (1) to Strike Defendant's Motion to Dismiss and, (2) to Require Defendant to Answer the Complaint**

Comes now the plaintiff through counsel in the above-entitled cause and moves this honorable court to strike defendant's motion to dismiss on file herein, and to order defendant to file an answer to the plaintiff's complaint within 10 days after the hearing of this motion, for the following reasons:

1. That defendant's motion to dismiss fails to state the grounds therefore with particularity as is required by Rule 7 (b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the motion to dismiss is a dilatory pleading.

Wherefore, plaintiff moves that an order be entered striking defendant's motion to dismiss and directing the said defendant to file an answer within 10 days after the Court's action herein.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General,  
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed May 5, 1955.

[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A and 7281-A

**MINUTE ORDER**

Friday, May 6, 1955

Upon the calling up of defendants' Motion to Dismiss the Complaint in two of the above cases, counsel stipulated that argument of the motion be set for a later time, and that all four cases be combined for the purpose of arguing the same motion in each case. The court set Thursday next at 10 a.m. as time for the hearing.

---

In the United States District Court for the District  
of Alaska Division Number One, at Juneau  
Civil Action No. 7300-A

**TERRITORY OF ALASKA,**

Plaintiff,

vs.

**NEW ENGLAND FISH CO., a Corporation,**

Defendant,

**COMPLAINT**

Comes now the plaintiff, Territory of Alaska, and for its cause of action against the defendant above named alleges:

**I.**

That the Territory of Alaska is a sovereign incorporated territory, organized under the laws of the United States.



## II.

That the defendant has represented itself heretofore as a corporation and has done business in the Territory of Alaska under the name "New England Fish Company" during the years 1951 and 1952.

## III.

That the said defendant, between the years 1951 and 1952, inclusive, had certain taxable real and personal property within the Territory of Alaska, the full and true value being as follows:

1951 .....	\$448,581
1952 .....	445,401

## IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1951 and 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$8,939.82, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

## V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$431.82, representing interest on said tax at the rate of 6% per annum, accrued from

the due date to and including March 31, 1955, together with

(b) interest on \$8,939.82 at the same rate from and after March 31, 1955, until paid.

VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$10,371.14, together with interest at 6% per annum on the sum of \$8,939.82 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$10,371.14, with interest on \$8,939.82 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 12th day of May, 1955.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1955.

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[Title of District Court and Cause.]

Civil Action File No. 7300-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Comes Now New England Fish Co., a corporation, through its attorneys, Faulkner, Banfield & Boocher, and moves the court to dismiss the plaintiff's complaint in the above-entitled cause upon the following grounds:

(1) That the complaint does not state a claim against the defendant upon which relief can be granted.

(2) That the action was not brought within the time required by law.

Dated at Juneau, Alaska, this 31st day of May, 1955.

/s/ W. C. ARNOLD,

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ H. L. FAULKNER,  
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31, 1955.

In the United States District Court for the District  
of Alaska Division Number One, at Juneau

Civil Action No. 7301-A

TERRITORY OF ALASKA,

Plaintiff,

vs.

P. E. HARRIS COMPANY, INC., a Corporation,  
Defendant.

### COMPLAINT

Comes now the plaintiff, Territory of Alaska, and  
for its cause of action against the defendant above  
named alleges:

#### I.

That the Territory of Alaska is a sovereign in-  
corporated territory, organized under the laws of  
the United States.



## II.

That the defendant is a corporation organized under the laws of the State of Washington.

## III.

That the said defendant, between the years 1951 and 1952 inclusive, had certain taxable real and personal property within the Territory of Alaska, the full and true value being as follows:

1951 .....	\$296,924
1952 .....	296,924

## IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1951 and 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$5,938.48, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

## V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$950.16, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$5,938.48 at the same rate from and after March 31, 1955, until paid.

VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$6,888.64, together with interest at 6% per annum on the sum of \$5,938.48, from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$6,888.64 with interest on \$5,938.48 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 12th day of May, 1955.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1955.

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[Title of District Court and Cause.]

Civil Action, File No. 7301-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant moves the Court to dismiss Plaintiff's Complaint because (a) it fails to state a claim against defendant upon which relief can be granted and (b) the action was not commenced within the time limited or required by law.

Dated at Juneau, Alaska, May 31, 1955.

**W. C. ARNOLD, and  
ROBERTSON, MONAGLE &  
EASTAUGH,**

By /s/ **R. E. ROBERTSON,**  
Attorneys for Defendant P. E.  
Harris Company, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31, 1955.

In the United States District Court for the District  
of Alaska Division Number One, at Juneau

Civil Action No. 7302-A

**TERRITORY OF ALASKA,**

**Plaintiff,**

**vs.**

**PACIFIC & ARCTIC RAILWAY & NAVIGA-  
TION COMPANY, a Corporation,**

**Defendant.**

**COMPLAINT**

Comes now the plaintiff, Territory of Alaska, and  
for its cause of action against the defendant above  
named alleges:

**I.**

That the Territory of Alaska is a sovereign incor-  
porated territory, organized under the laws of the  
United States.

**II.**

That the defendant is a corporation organized  
under the laws of the State of West Virginia.

**III.**

That the said defendant, between the years 1950  
and 1952, inclusive, had certain taxable real and  
personal property within the Territory of Alaska,  
the full and true value being as follows:

1950 .....	\$360,700
1951 .....	360,700
1952 .....	360,700



## IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1950 through and including 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$10,821.00, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

## V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$2,055.99, representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$10,821.00 at the same rate from and after March 31, 1955, until paid.

## VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$12,876.99, together with interest at 6% per annum on the sum of \$10,821.00 until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$12,876.99, with in-

terest on \$10,821.00 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 12th day of May, 1955.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1955.

[Title of District Court and Cause.]

Civil Action File No. 7302-A

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Comes Now Pacific & Arctic Railway & Navigation Company, a corporation, through its attorneys, Faulkner, Banfield & Boochever, and moves the court to dismiss the plaintiff's complaint in the above-entitled cause upon the following grounds:

- (1) That the complaint does not state a claim against the defendant upon which relief can be granted.
- (2) That the action was not brought within the time required by law.

Dated at Juneau, Alaska, this 31st day of May, 1955.

**FAULKNER, BANFIELD &  
BOOCHEVER,**

By /s/ H. L. FAULKNER,  
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31, 1955.

In the United States District Court for the District  
of Alaska Division Number One, at Juneau

Civil Action No. 7303-A

**TERRITORY OF ALASKA,**

**Plaintiff,**

**vs.**

**OCEANIC FISHERIES CO., a Corporation,**

**Defendant.**

**COMPLAINT**

Comes now the plaintiff, Territory of Alaska, and  
for its cause of action against the defendant above  
named alleges:

**I.**

That the Territory of Alaska is a sovereign in-  
corporated territory, organized under the laws of  
the United States.

**II.**

That the defendant is a corporation organized  
under the laws of the State of Washington.

**III.**

That the said defendant, between the years 1951  
and 1952 had certain taxable real and personal  
property within the Territory of Alaska, the full  
and true value being as follows:

1951 .....	\$257,831
1952 .....	155,012



## IV.

That by reason of the fact that this property was in the Territory of Alaska during the years 1951 and 1952, defendant owes plaintiff, as of March 31, 1955, the sum of \$4,128.43, plus interest, the same being property taxes due the plaintiff under the provisions of Chapter 10, Session Laws of Alaska, 1949.

## V.

That by reason of the fact that said tax and interest was not paid when due, although demands have been made of the defendant, said tax is now, and has been for some time past, delinquent, and there is as of March 31, 1955, due and owing to the plaintiff, in addition to said tax:

(a) The sum of \$691.40 representing interest on said tax at the rate of 6% per annum, accrued from the due date to and including March 31, 1955, together with

(b) interest on \$4,128.43 at the same rate from and after March 31, 1955, until paid.

## VI.

That the total sum as of March 31, 1955, due and owing plaintiff from defendant is \$4,819.83, together with interest at 6% per annum on the sum of \$4,128.43 from and after March 31, 1955, until paid.

Wherefore, plaintiff prays that the Court enter herein a decree as follows:

1. That plaintiff have judgment against the defendant for the total sum of \$4,819.83 with interest on \$4,128.43 at 6% per annum from March 31, 1955, until paid.

2. Ordering all of defendant's property not exempt by law to be sold to satisfy the sums due plaintiff and that plaintiff be permitted, if it so desires, to bid for and purchase said property and to off-set such bid with the amount of the debt due plaintiff as established in the judgment to be entered herein; provided, however, that if the proceeds of said sale are insufficient to satisfy the judgment, the sum remaining unsatisfied may be enforced by execution as in ordinary cases.

3. Ordering that the remainder of the proceeds, if any, after the payment of the judgment and all costs herein be remitted to the defendant.

4. For such other and further relief as to the Court may seem meet and just.

Dated at Juneau, Alaska, this 12th day of May, 1955.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General.

Duly verified.

[Endorsed]: Filed May 12, 1955.

[Title of District Court and Cause.]

**MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

Defendant moves the Court to dismiss Plaintiff's Complaint because (a) it fails to state a claim against defendant upon which relief can be granted and (b) the action was not commenced within the time limited or required by law.

Dated at Juneau, Alaska, May 31, 1955.

**ROBERTSON, MONAGLE &  
EASTAUGH,**

By /s/ R. E. ROBERTSON,  
Attorneys for Defendant Oceanic Fisheries Com-  
pany, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31, 1955.

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A and 7281-A

**OPINION**

Filed May 24, 1955

The defendants have moved to dismiss the plaintiff's complaint on the grounds that (1) it does not state a claim for which relief can be granted, and (2) that the statute of limitations (presumably Sec. 55-2-7 of the Code) has run. The plaintiff has coun-

tered by a motion to strike the defendants' motion on the following grounds: (1) that the grounds of the motion to dismiss were not stated with particularity as required by Rule 7(b) (1) F.R. Civ. P.; (2) that the bar of statute of limitations is not available on a motion to dismiss the complaint; and, (3) that the motion is dilatory. The second ground has been abandoned in view of *Suckow Borax Mines vs. Borax Consolidated*, 185 F. 2d. 196, 202 (9th Cir.), and hence will not be discussed.

Argument of the defendants' motion to dismiss has been deferred pending a disposition of the plaintiff's motion to strike.

The defendants' answer to plaintiff's argument that the motion to dismiss requires particularity is that it conforms to Form 19 of the Appendix of Forms to the F.R. Civ. P. The question presented, therefore, is whether this form meets the requirement of particularity under Rule 7(b) (1). There is a dearth of authority on this question and even that is in conflict. Thus the view stated in 1 *Barron & Holtzoff*, 405-6, Sec. 244, that Form 19 is deficient is opposed by Moore in 2 *Moore's Federal Practice*, 1511-12, Sec. 7.05. So far as diligent search discloses, no court has denied a motion conforming to Form 19 as insufficient. And, although it was indicated in *Advertisers' Exchange, Inc., vs. Bayless Drug Store*, 3 F.R.D. 178, and *Trammel vs. Fidelity and Casualty Co.* 45 F.S. 366, 367-8, that the language of Form 19 is insufficient, the court in each instance nevertheless proceeded to decide the motion on the



merits. It is also noteworthy that in *Sapero vs. Shackelford*, 109 F.S. 321-2, and *Kirby vs. Pennsylvania Railroad Co.*, 92 F.S. 417, 423 reversed on other grounds, 188 F. 2d. 793, it was held that motions in the form of that here dealt with were sufficient. It should be noted in this connection, however, that the first two cases cited were decided in 1942, prior to the following amendment of Rule 84:

"The forms contained in the Appendix of Forms are sufficient under the rules." (Emphasis supplied.)

Although it can hardly be said that the matter is free from doubt, *Munson Line vs. Green*, 6 F.R.D. 470, 474, it would appear that under the cases cited supra the court is warranted in holding that Form 19 is sufficient to meet the requirements of Rule 7, 2 Moore, 2265-6, Sec. 12.14. Undoubtedly, since a contrary holding would eliminate surprise and delay and thus conduce to the administration of justice, I am convinced that this Court should, in the interest of justice, adopt a rule in conformity with that existing in most federal jurisdictions requiring the movant to submit a brief or memorandum in support of his motion.

The conclusion reached makes it unnecessary to decide the third objection.

One other observation may be pertinent. A motion to strike a motion is not only not authorized by the Rules but considered quite unnecessary, *Berens*,

vs. Berens, 30 F.S. 869; Klages vs. Cohen, 5 F.R.D. 32, 34; Madusa Portland Cement Co. vs. Pearl Assurance Co., 5 F.R.D. 332-3; In re Amsterdam Brewing Co., Inc., 35 F.S. 618-619; Welcher vs. U. S., 14 F.R.D. 235, 237.

An order may be presented denying the motion to strike.

/s/ GEORGE W. FOLTA,  
District Judge.

[Endorsed]: Filed May 25th, 1955.

[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A and 7281-A

**ORDER OVERRULING PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' MOTION TO DISMISS**

This matter having come on before the Court on May 12, 1955, upon motion of plaintiff to strike the motions filed by defendants hereinabove named to dismiss the complaints, and the plaintiff appearing by Henry J. Camarot, Asst. Attorney General, and the defendants by H. L. Faulkner and R. E. Robertson, and the parties having argued the motion of plaintiff to strike defendants' motions, and having thereafter filed briefs, and the Court having considered the matter and being fully informed and having filed its written Opinion on May 24, 1955,

It Is Hereby Ordered that plaintiff's motions to strike defendants' motions be, and they are hereby denied in each of the above-entitled cases which have been consolidated for the purpose of arguing the motions of defendants to dismiss plaintiff's complaints and the motion of plaintiff to strike defendants' motions.

Dated this 31st day of May, 1955.

/s/ GEORGE W. FOLTA,  
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31st, 1955.

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A,  
7300-A, 7301-A, 7302-A and 7303-A

MINUTE ORDER  
FRIDAY, OCTOBER 28, 1955 (4)

These cases, all relating to the same question and the same Motion to Dismiss being filed in each case, they had previously been consolidated for the purpose of hearing. Counsel appeared as follows: H. L. Faulkner for Nos. 7278-A, 7279-A, 7300-A and 7302-A. R. E. Robertson appeared for defendant companies in Nos. 7280-A, 7281-A, 7301-A and 7303-A. Winton C. Arnold appeared for all defend-

ants. The cases numbered in the 73 hundreds had not been included in the consolidation order made by the late Hon. George W. Folta, so upon motion of counsel, the court at this time entered an order consolidating all eight cases, on two of which, orders were signed. Henry J. Camarot, Asst. Attorney General, appeared for the plaintiff, Territory of Alaska. The court ruled that argument time would be enlarged over that as provided by rule for arguing motions, by extending to counsel the remainder of the day, divided equally, or about 1 Hr. and 15 Min. to each side.

Mr. Arnold opened the argument for defendant companies, and he was followed by Mr. Faulkner; Mr. Robertson presenting no argument. Mr. Camarot argued for the Territory and then Mr. Arnold closed for defendants. Mr. Camarot asked for permission to file his brief and he was given 10 days, and 10 days was allowed to defendants for reply brief if they found it necessary. Before adjournment was taken, the court stated that it was of the opinion that possibly these cases should be decided on their merit rather than on procedure or remedy.

Thereupon court was adjourned till tomorrow morning at 10:00 o'clock.



[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A,  
7300-A, 7301-A, 7302-A and 7303-A

**REPORTER'S TRANSCRIPT OF PLAINTIFF'S OFFER OF PROOF, OCTOBER 28, 1955**

Be It Remembered, that on the 28th day of October, 1955, at 2:00 o'clock p.m., at Juneau, Alaska, the above-entitled causes came on for hearing on defendants' motion to dismiss; the Honorable Walter H. Hodge, United States District Judge, presiding; the plaintiff appearing by Henry J. Camarot, Assistant Attorney General of Alaska; the defendants in cause Nos. 7278-A, 7279-A, 7300-A and 7302-A appearing by H. L. Faulkner and W. C. Arnold, their attorneys; the defendants in cause Nos. 7280-A, 7281-A, 7301-A and 7303-A appearing by R. E. Robertson and W. C. Arnold, their attorneys; and at said hearing the following offer of proof was made by plaintiff's attorney:

The Court: Will you make your offer again, counsel?

Mr. Camarot: If the Court please, when the defendants argued their motions to dismiss, they recognized the general repealer clause, Section 19-1-1. However, they stated that they were of the opinion that Chapter 22, S.L.A. 1953, and particularly Section 2 (a), was a special repealer clause which necessarily made an exception to the general repealer clause, and, therefore, all taxes that would have been

due and owing to the Territory of Alaska prior to 1953 would be null and void.

The Territory wishes at this time to call the Court's attention to the fact that Section 2 (a) of Chapter 22—

The Court: Counsel, I understood you were not to argue this point, but you may introduce this evidence here.

Mr. Camarot: I just want to give the background, if the Court please, so it will be clear in the record.

The Court: Very well.

Mr. Camarot: The Territory of Alaska, plaintiff, wishes to call to the Court's attention that Section 2 (a) is not in fact merely a special repealer clause but, rather, adds an extra ingredient and, really, advantage to the municipalities, school or public utility districts who may be involved in that it permits them to levy and assess during the current fiscal year, which could be beyond the year 1952 and to the year 1953, an additional assessment. The Territory was completely prohibited from levying any taxes after 1952.

In further support that this was the intent of the Legislature I would like to introduce House Bill No. 3, which contains a provision to the effect "That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, S.L.A. 1949, are hereby cancelled, repealed and abrogated, and declared null and void." And I proffer this particular evidence to show the intent of the

Legislature was not to permit the cancellation of all taxes due and owing prior to 1952 in that they specifically omitted this particular section. There is no question this particular section was included in the original House Bill which was introduced, and I call to the Court's attention that the final act which is in the regular Session Laws completely omits that phrase which cancels all previous taxes.

The Court: You have made your offer. I understand the defendants object.

Mr. Arnold: For the grounds previously stated we object, your Honor.

Mr. Camarot: If the Court please, I don't know that the grounds previously stated will show in the record.

The Court: Well, it is not necessary. This matter is before the Court upon a motion to dismiss the complaint of plaintiff in these several cases, consolidated, upon the grounds that it fails to state a claim under the Federal Rules of Civil Procedure. In such a hearing we cannot introduce evidence of something other than the acts of the Legislature or such matters as Journal entries, of which the Court could take judicial notice, indicating any such intent or indicating the question of intent. We can hear only tests and sufficiency of the complaint, for which reason the offer to introduce this exhibit of the House Bill, which was not passed, as I understand it, by the Legislature, must be denied. I might add that, even if admitted, from the statement of counsel such bill would not bear out counsel's contention.

Mr. Camarot: For the record, I will note our exception to that, if the Court please, and, if I may, if there is no objection, I would like to call the Court's attention to the case of Jefferson Hotel Company vs. Jefferson Standard Life Insurance Company, 7 Federal Rules Decisions 722; Michel vs. Meier, 8 Federal Rules Decisions 464; and the General Rules of Statutory Construction, Citing 82 Corpus Juris Secundum, page 736, et seq.

The Court: Well, the same ruling, except we will state that the Court will take notice of all acts of the Legislature, of all Journal entries of either House or Senate, as they may appear of record, in determining this matter of the tax.

Mr. Camarot: I understand the Court's ruling, I believe.

(End of Record.)

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A,  
7300-A, 7301-A, 7302-A and 7303-A

**REPORTER'S TRANSCRIPT OF EXTRACT  
OF PROCEEDINGS, OCTOBER 28, 1955**

Be It Remembered, that on the 28th day of October, 1955, at 2:00 o'clock p.m., at Juneau, Alaska, the above-entitled causes came on for hearing on defendants' motion to dismiss; the Honorable Walter H. Hodge, United States District Judge, presiding;



the plaintiff appearing by Henry J. Camarot, Assistant Attorney General of Alaska; the defendants in cause Nos. 7278-A, 7279-A, 7300-A and 7302-A appearing by H. L. Faulkner and W. C. Arnold, their attorneys; the defendants in cause Nos. 7280-A, 7281-A, 7301-A and 7303-A appearing by R. E. Robertson and W. C. Arnold, their attorneys; and at the conclusion of the hearing the following occurred:

The Court: Not long ago an opinion of one of the Justices of the Circuit Court of Appeals concluded rather facetiously with the remark that the Court was not going to decide something that it does not have to decide which can be put off until another time.

If we should take that position here, I think this matter can be determined immediately without briefs on the question purely of remedy because I cannot conceive how possibly, under the interpretation which the plaintiff seeks to present here of the provision set up by Chapter 10 of the Laws of '49, which enforces the real property tax, there can be conceivably any remedy to bring a suit for individual liability for it is not claimed that any tax was ever set. It merely says that certain taxes became due, and they do not follow at all the procedure set up for the foreclosure of the lien of the taxes by the Tax Commissioner. I feel that is the only issue here.

As to the remedy taken by the Territory, I feel that there would be nothing for the Court to do but

to dismiss the action, but it occurs to me that if we do that we will be doing precisely what was done in the Hess case. We will merely defer the more important question of whether or not the tax may be in fact collected by proper remedy, and in any attempt to dodge that issue it is going to come back to the Court to be decided in the future, the same as it was in the Hess case.

Therefore, I think it is incumbent upon the Court to not dispose of this case entirely upon this issue of remedy but also to look to the merits of the thing and try and determine whether the repealing clause with the expressed saving clause therein, the repealing act of 1953 with the expressed saving clause of Section 2, in effect cancelled the taxes, or that portion of the real and property tax which accrues to the Territory, or whether, as contended, the saving clause is meant to apply to all taxes, or whether, as contended, the saving clause does not apply, but that the matter should be determined instead upon Section 19-1-1 of the Compiled Laws of Alaska.

Therefore, we shall examine the question and try and determine the whole matter on the merits of the controversy rather than the question of remedy. Now, perhaps, I am undertaking more than we need to do, but I feel that if I dismiss this case on the question of remedy that it is going to come right back at us again because the Territory can probably start another suit, so we will consider then the briefs submitted by both parties and file a written opinion whenever we are able to determine the matter, which possibly can be done while the court

party is at Ketchikan, that is, providing that they give us one day out of a month off the bench down there, which they haven't been doing here.

Mr. Camarot: If the Court please, do I understand that on the motion to dismiss the Court is going to decide this matter on the merits, and you would like——

The Court: Yes; rather than on the question of procedure. I feel that on the question of procedure that there is no doubt that the thing is not properly before the Court, but we will try and determine it instead on the matter of the merits.

Mr. Camarot: I see; and you would like briefs based primarily on the merits of the case.

The Court: Well, of course, if you wish to still urge the other matter, why, I do not preclude you from doing so.

Mr. Camarot: You don't preclude me from urging, but you are indicating what you are going to do.

The Court: But, as the man from Missouri says, you will have to show me, counsel.

(End of Record.)

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## EXHIBIT "A"

### Proof of Official Record

I. Waino Hendrickson, Secretary of the Territory of Alaska, do hereby certify that I have compared the paper to which this certificate is attached with

the original Senate Bill No. 5 as the same appears of record and on file in my office, at the Federal Building, in the City of Juneau, Territory of Alaska, and that the same is a true and correct copy of said Original and the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Juneau, Alaska, this 5th day of November, 1955.

[Seal]     /s/ WAINO E. HENDRICKSON,  
Secretary of Alaska.

In the Senate

By Senators Jensen, Stepovich, Robison, Engstrom,  
Lhamon, Gorsuch, Barnes, Coble, Snider, Lyng,  
and Jones

Senate Bill No. 5

In the Legislature of the Territory of Alaska  
Twenty-First Session

A Bill

For an Act entitled:

“An act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency.”



**Be It Enacted by the Legislature of  
the Territory of Alaska**

**Section 1.** That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

**Section 2.** That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void.

**Section 3.** An emergency is hereby declared to exist and this act shall be in full force and effect for and after the date of its passage and approval.

**S.B. No. 5**

**(Copy.)**

**EXHIBIT "B"**

**Proof of Official Record**

I, Waino Hendrickson, Secretary of the Territory of Alaska, do hereby certify that I have compared the paper to which this certificate is attached with the original House Bill No. 3 as the same appears of record and on file in my office, at the Federal Building in the City of Juneau, Territory of Alaska, and that the same is a true and correct copy of said original and the whole thereof.



In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Juneau, Alaska, this 28th day of October, 1955.

[Seal] /s/ WAINO E. HENDRICKSON,  
Secretary of Alaska;

By /s/ MARGUERITE P. SHAW,  
Secretary to the Secretary of  
Alaska.

In the House

By Mr. Hurley

House Bill No. 3

In the Legislature of the Territory of Alaska  
Twenty-First Session

A Bill

For an Act entitled:

"An act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency."

Be It Enacted by the Legislature of  
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erty, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void.

Section 3. An emergency is hereby declared to exist and this act shall be in full force and effect for and after the date of its passage and approval.

H.B. No. 3

(Copy.)

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A,  
7300-A, 7301-A, 7302-A and 7303-A

### OPINION

In 1949 the Alaska Territorial Legislature enacted the first general property tax act of the Territory, being Chapter 10, S.L.A., 1949, known as the "Alaska Property Tax Act." Such act provided for the levy, assessment and collection of a tax upon all real and personal property in the Territory (except property specifically exempted) at the rate of 1% of the value thereof. It provided that the tax within the limits of incorporated cities, school districts and public utility districts, shall be assessed and collected in the manner prescribed by the property tax law of the municipality or district; and set

up specific provisions for the assessment, levy, and collection of the tax outside of such cities and taxing districts. The tax collected within such cities, school districts and public utility districts was to be retained by them; and the tax collected outside of the same was payable into the Treasury of the Territory. This act was repealed by Chapter 22, S.L.A. 1953, hereinafter referred to as the "repealing act." Section 2 of this act contained the following express savings clause:

"Section 1 of this Act shall not be applicable to

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district;"

In April, 1955, the Territory filed the above-entitled actions seeking to recover judgment against the several defendants named for taxes accrued under the provisions of Chapter 10 for the years 1949-1952 inclusive, which the defendants had refused to pay. The defendant in each case filed a motion to dismiss plaintiff's complaint on the grounds that the complaint does not state a claim upon which relief can be granted and that the action was not brought within the time limited by law. Hearing was had before the Court on such motions and the matter submitted on briefs.

At the conclusion of the oral argument the Court held that no personal action would lie against the defendants for recovery of the taxes involved and that the plaintiff had not sought the proper remedy for foreclosure of the lien of the tax in the manner provided by law; but that to avoid a multiplicity of actions, the matter would be determined on its merits, as to whether or not the Territory has any right for collection of such taxes in view of the repeal—that is, whether the taxes sought to be collected survive the repeal and if such taxes did survive, whether there is a remedy available for their collection.

The Territory, in its brief, again raises this question of procedure, claiming a personal liability of the defendants for such taxes. This issue has been squarely determined against the plaintiff by the District Court for this Division in the case of *City of Yakutat vs. Libby, McNeil & Libby*, 13 Alaska 378, 98 F. Supp. 101. Such action involved the question of remedy as to taxes levied by municipalities in which the Court held that the remedy sought of a personal action against the taxpayer is not available since the remedy prescribed by statute is exclusive. In the same manner Chapter 10 provided an exclusive method of levy and collection of the general property tax. This question, therefore, will not be further considered.

Plaintiff relies in support of its position that the accrued and unpaid taxes were not cancelled or repealed by the repealing act upon the "general sav-



ings clause" of the Territory, being Sec. 19-1-1, A.C.L.A., 1949, which statute provides as follows:

\* \* \* "The repeal or amendment of any statutes shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute \* \* \*"

the defendants' position is that this Alaska general savings act, being in conflict with the special savings clause of the repealing act, has no application and saved only the taxes levied by municipalities, school or public utility districts.

✓It is a fundamental rule of statutory construction that a general savings clause or statute preserves rights and liabilities which have accrued under the act repealed and that they operate to make applicable in designated situations the law as it existed before the repeal, unless such application is negatived by the express terms or clear implication of a particular repealing act, or where not otherwise provided by the repealing act. And, where there are express savings clauses in repealing statutes which are later in time, constituting the express will of the Legislature, such have been taken as an indication of legislative intent to save nothing else from the repeal, and the general savings statute in force in the state does not apply. 82 C.J.S., Statutes, 1014, Sec. 440; 50 Am. Jur.,

Statutes, 534-5, Secs. 527-528; *Great Northern Ry. Co. vs. United States*, 208 U. S. 452; *Wilmington Trust Co. vs. United States*, 28 F. 2d 205; *United States vs. Chicago, St. P., M. & O. Ry. Co.*, 151 F. 84; *United States vs. Standard Oil Co.*, 148 F 719.

In the *Wilmington Trust Co.* case the District Court of Delaware held that repeal of parts of the Revenue Act of 1918 by the Revenue Act of 1921, which provided that the parts repealed shall remain in force as to "the assessment and collection of all taxes which have accrued" under the previous act, left all of the estate tax provisions of the former statute except those expressly saved by the act "as completely obliterated and extinguished \* \* \* as if the repeal had been absolute and unqualified," since the saving clause kept alive the repealed parts of the earlier act for collection of only those taxes "accrued" under the earlier act, and saves to the government only such previously accrued taxes. In this case the general Federal savings clause (R.S. Sec. 13, 1 U.S.C.A. 29) was relied upon to show that the liability of the tax was not destroyed by the repeal of the statute. Upon this point the opinion states:

"Of this statute the court, in *Great Northern Railroad Co. vs. United States*, 208 U.S. 452, 28 S. Ct. 313, 52 L. Ed. 567, said: As it 'has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested, either expressly or by necessary implica-

tion, in a subsequent enactment.' As the estate tax provisions of the Revenue Act of 1918 were expressly repealed, with specified exceptions, it must be assumed that the exceptions specified constituted a denial of others. To enlarge the exceptions by adding the provisions of Sec. 13 of the Revised Statutes thereto, or, more accurately stated, to add to the saving clause of the repealing statute the provisions of R.S. Sec. 13, which, as I understand it, is in implied, if not direct, conflict with the first sentence of the saving clause of the repealing act, would, I think, be a plain disregard of the will of Congress as manifested in the repealing act. \* \* \*

by the same token, it follows that the provisions of the Alaska savings act cannot justify a disregard of the express will of the Legislature as manifested in the subsequent enactment.

Plaintiff contends that the soundness of the Court's reasoning in this case has been subsequently questioned in other decisions, citing *New York Life Ins. Co. vs. Bowers*, 34 F. 2d 60; *Schoenheit vs. Lucas*, 44 F. 2d 476; *Alker vs. United States*, 38 F. 2d 879; *Hanna vs. United States*, 68 Ct. of Claims 45; and *Burrows vs. United States*, 56 F. 2d 465. In these cases the decision in the *Wilmington Trust Co.* case is distinguished in application only as to the time that the tax involved was regarded as accrued, or was applied under differing circumstances; but we cannot find that the principle

announced as above quoted is departed from in these decisions.

Plaintiff also relies upon the decision of the Circuit Court of Appeals for the 8th Circuit in the case of Great Northern Ry. Co. vs. United States, 155 F. 945; affirmed by the Supreme Court, 208 U.S. 452, which does not relate to a savings clause in a repealing statute but rather to an amending statute reenacting the former statute with changes. The defendant contended that the effect of the amending act was to repeal it, and hence he could not be prosecuted under the former act. The Court held against such contention, stating that:

“Where a statute is amended ‘so as to read as follows’ or is reenacted with changes, or is in terms repealed and simultaneously reenacted with changes, the amendatory or reenacting act becomes a substitute for the original, which then ceases to have the force and effect of an independent enactment \* \* \*”

and that “in these circumstances” the special savings clause in the amending statute would not by implication extinguish liabilities accrued under the previous act, and not expressly saved by the act. In affirming this decision, the opinion of the Supreme Court states (p. 464): “Conceding for the sake of argument only that the effect of the amendment and reenactment of the Elkins Act by Sec. 2 of the Hepburn law was to repeal the Elkins Act,” the Court would then proceed to determine what effect such repeal would have in the light of the general savings



clause; and expressly held as quoted in the Wilmington Trust Co. case above (p. 465).

There is another fundamental rule of statutory construction which must be considered in this connection, and that is the rule of "*expressio unius est exclusio alterius*"—the mention of one is the exclusion of others—which requires a holding that the Legislature intended to save the taxes specifically mentioned in the repealing act and to exclude all others. Sutherland on Statutory Construction, 3rd Ed. Vol. 2, p. 412, Sec. 4915; p. 416, Sec. 4916; *Jones vs. Crosswell, Inc.*, 60 F. 2d 827; *Ryholt vs. Jarrett*, 112 F. 2d 642; *Territory ex rel Sulzer vs. Canvassing Board*, 5 Alaska 602, p. 622.

A decision of the Supreme Court of Kansas in the case of *State vs. Showers*, 8 p. 474, is especially in point, as it relates to a state savings clause as distinguished from the Federal savings clause. In that case the Court was considering the effect of a general savings statute identical with the Alaska statute, as against a later specific savings proviso contained in a repealing act. The opinion of the Court states as follows:

"The question as to what should be repealed and what saved was before the legislature. They had the entire subject matter thereof under consideration, and evidently intended to cover the entire ground; and evidently intended that nothing should be repealed except what they expressly repealed, and that nothing should be

saved except what they expressly stated should be saved. They expressly saved some things; therefore it must be inferred that they intended to save no others. *Expressio unius est exclusio alterius.*"

the opinion also points out that if the special savings cause in the repealing act was not intended to cover the entire ground and to substitute for the general savings statute, then it "has no office to perform," for the general savings clause would save all that it saves and very much more. In the same manner, if we adopted the view of the plaintiff, the savings clause of Sec. 2 of the 1953 Act would have no office to perform and would be meaningless.

Plaintiff also argues that Section 2 of the repealing act was not intended to be a savings clause, but was intended to "afford" or "allow" municipalities, school and public utility districts additional revenues by allowing them to still levy and assess taxes previously accrued and to accrue during the fiscal year. This logic may be likened to arguing that a revenue act does not create a revenue tax but is levied only for the purpose of collecting revenue; and is wholly unsound. Further, plaintiff contends that there was no intent to cancel all accrued taxes, other than those expressly saved. We cannot so disregard the obvious intent of the Legislature. Plaintiff also argues that the provisions of Section 2 and of the general savings clause are not in conflict and are not to be considered "*in pari materia*"; and that revenue laws should not be considered repealed "by

implication." However, there is an irreconcilable conflict between the two statutes, and there appears no repeal by implication, but rather by express enactment.

Plaintiff also directs our attention to the fundamental rule that the intent of the Legislature should govern, which, of course, is true; and suggests that resort should be had to the history of the passage of the act through the Legislature to determine such intent. Exhibits offered by the plaintiff include another bill introduced in the Legislature, which was rejected at the hearing and cannot be considered, as it is not a part of the legislative history of the act in question. However, the Court may take judicial notice of the history of the passage of this particular act to determine the meaning of terms and expressions if they are in any way ambiguous. The repealing act as passed was House Bill No. 3. Reference to the House Journal discloses that the bill as originally introduced on January 27th was entitled:

"An act to repeal Chapter 10, S.L.A., 1949, as amended by Chapter 88, S.L.A., 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency." (H. J. p. 45.)

which, it is noted, specifically provided for canceling and repealing all accrued and unpaid taxes. The Committee on Judiciary recommended that the bill pass with the following amendment: That the title be changed to read:



**"An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, S.L.A., 1949, as amended by Chapter 88, S.L.A., 1949, and declaring an emergency." (H. J. p. 103.)**

as thus amended the act would have saved all accrued taxes under the general savings clause. Thereafter other amendments were proposed but failed of passage and on February 11 the bill passed the House and was sent to the Senate (H. J. p. 219). The Senate amended the act by adding thereto Section 2 as it appears above (S. J. p. 244), which expressly saved only the taxes levied and assessed by a municipality, school or public utility district. In this form the bill passed the Senate and was sent back to the House (S. J. p. 441). The House concurred in the Senate amendment (H. J. p. 517), in which form the bill passed both Houses. Hence it is clear that the final decision of the Legislature was neither to abrogate all accrued and unpaid taxes levied under the act nor to save them, but to save only those taxes levied and assessed by municipalities, school and public utility districts. Such intent is further borne out from the title of the repealing act as finally passed, which reads as follows:

**"To repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency." (Emphasis added.)**



When the Legislature of the Territory has spoken in clear language and when by so doing appears to have declared a positive policy with accurate precision, the courts may not be called upon to distort the language of the Legislature, however undesirable such may appear to the taxing authorities of the Territory, or however unjust such result may be as to those taxpayers who paid the property tax without protest.

The general property tax throughout the Territory not being saved, the Territory is also without remedy to collect and enforce such accrued taxes. 50 Am. Jur. 535, Sec. 529; Sutherland on Statutory Construction, 3rd Ed. Sec. 2050, Vol. 1, p. 537; Vance vs. Rankin, 62 N.E. 807; Schmuch vs. Hartman, 70 Atl. 1091.

I conclude, therefore, that under the provisions of Section 2 of the repealing act neither the tax nor the remedy survive the repeal.

In view of this decision, the question of the statute of limitations need not be considered.

Defendants' motion to dismiss is granted and judgment of dismissal for failure of the plaintiff to state a claim upon which relief can be granted may be entered.

Dated at Juneau, Alaska, this 4th day of January, 1956.

**WALTER H. HODGE,**  
District Judge.

[Endorsed]: Filed January 4th, 1956.

**In the District Court for the District of Alaska  
Division Number One at Juneau**

**No. 7278-A**

**TERRITORY OF ALASKA,**

**Plaintiff,**

**vs.**

**AMERICAN CAN COMPANY,**

**Defendant;**

**No. 7279-A**

**FIDALGO ISLAND PACKING COMPANY,**

**Defendant;**

**No. 7280-A**

**LIBBY, McNEILL & LIBBY, INC.,**

**Defendant;**

**No. 7281-A**

**NAKAT PACKING COMPANY,**

**Defendant;**

**No. 7300-A**

**NEW ENGLAND FISH CO.,**

**Defendant;**

**No. 7301-A**

**P. E. HARRIS COMPANY, INC.,**

**Defendant;**

**No. 7302-A**

**PACIFIC & ARCTIC RAILWAY & NAVIGATION CO.,**

**Defendant;**

**No. 7303-A**

**OCEANIC FISHERIES CO.,**

**Defendant.**

**ORDER OF DISMISSAL**

In the above-entitled and numbered cases, each of the defendants having filed motion to dismiss plaintiff's complaint, under Rule 12(b) Federal Rules of Civil Procedure; and the cases having been consolidated for the argument and proceedings in connection with the motions; and the questions of law raised by the motions, which are common to all the cases, having been argued before the court on October 28th, 1955, by counsel for all the parties, who thereafter filed briefs in support of their arguments; and the court being fully informed, and having on January 4th, 1956, rendered and filed herein its written opinion, to which reference is made,

It Is Now Therefore Ordered: That the complaints in each of the above-entitled and numbered causes, be and they are hereby dismissed, for the reasons stated in the court's opinion of January 4th, 1956.

Dated at Juneau, Alaska, the 21st day of January, 1956.

/s/ **WALTER H. HODGE,**  
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed January 21st, 1956.

[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A  
7300-A, 7301-A, 7302-A and 7303-A

### NOTICE OF APPEAL

Notice is hereby given that the Territory of Alaska, the above-named plaintiff, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's complaints in the above-numbered civil actions, entered on the 21st day of January, 1956.

Dated at Juneau this 7th day of February, 1956.

/s/ J. GERALD WILLIAMS,  
Attorney General;

/s/ HENRY J. CAMAROT,  
Assistant Attorney General,  
Attorneys for Plaintiff.

[Endorsed]: Filed February 7th, 1956.

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A  
7300-A, 7301-A, 7302-A and 7303-A

### STATEMENT OF POINTS

The points in the above appeal upon which Appellant intends to rely are as follows:

(1) The Court erred in granting the Appellee's Motion to Dismiss the Complaint.



This is error since the Complaint did state a claim upon which relief can be granted, in that Territorial law specifically permits recovery of the real and personal property taxes sought therein.

(2) The Court erred in holding that a personal action would not lie against each of the Appellees for the recovery of the taxes involved.

This is error since Section 12 of Chapter 10, S.L.A., 1949, and other Sections therein, decrees that the "person" is to be "assessed and taxed."

(3) The Court erred in holding that the accrued and unpaid taxes due and owing under Chapter 10, S.L.A., 1949, by the Appellees to the Appellant for the years 1949, 1950, 1951 and 1952 were cancelled and excused by Chapter 22, S.L.A., 1953.

This is error: (a) Since Chapter 22 and the legislative history surrounding the passage of this Act indicates the accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952 were not to be cancelled or excused; and (b) Since the cancellation or excusing of such taxes would create an unjust result as to those taxpayers who in good faith have paid the said tax.

(4) The Court erred in refusing to consider pertinent evidence of legislative history which, if considered, would show the true legislative intent and statutory construction to be placed on Chapter 22, S.L.A., 1953, i. e., that unpaid taxes levied by Chapter 10, S.L.A., 1949, were not intended to be cancelled or excused by the Legislature.

This is error since the rejected evidence would have clearly shown that the legislative intent and intended statutory construction is contrary to the District Court's holding and that the payment of said taxes were not excused by the Legislature.

(5) The Court erred in rejecting the introduction into evidence of both the original House Bill No. 3 and Senate Bill No. 5, Twenty-First Session, Territory of Alaska Legislature.

This is error since the original House Bill and the Senate Bill which by their plain language would have excused the accrued taxes for the specific years involved, were unqualifiedly rejected by both houses and therefore clearly manifest a legislative intent not to excuse the payment of said back taxes.

(6) The Court erred in holding that the Territory's general savings clause (Section 19-1-1 ACLA 1949) is in irreconcilable conflict with the alleged "specific savings clause" of Section 1 of Chapter 22, S.L.A., 1953.

This is error since the Territory's general savings clause and the alleged specific savings clause in Chapter 22 are in complete harmony and easily reconcilable.

(7) The Court erred in holding that the Appellant is without remedy to collect and enforce the taxes accruing to the Appellant under Chapter 10, S.L.A., 1949.

This is error in that: (a) Chapter 10, S.L.A., 1949, expressly authorizes the collection and enforce-

ment of taxes by property foreclosure; and (b) The common law, which is expressly made applicable to Alaska by Territorial statute, authorizes the collection of taxes by appropriate in personam proceedings where the taxpayer is personally liable.

Dated at Juneau, Alaska, this 27th day of February, 1956.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General;

By /s/ **EDWARD A. MERDES,**  
Assistant Attorney General.

Receipt of copy acknowledged.

[Endorsed]: Filed February 27th, 1956.

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[Title of District Court and Causes.]

Nos. 7278-A, 7279-A, 7280-A, 7281-A,  
7300-A, 7301-A, 7302-A and 7303-A

**CLERK'S CERTIFICATE**

I, J. W. Leivers, Clerk of the District Court for the District of Alaska, Division Number One thereof, do hereby certify that the hereto-attached pleadings are the original pleadings and all Orders of the Court filed in the above-entitled causes, and constitutes the record on appeal as designated by the Appellant.

In witness whereof, I have hereto set my hand and caused the seal of the above-entitled court to be affixed at Juneau, Alaska, this 13th day of March, 1956.

[Seal]      /s/ J. W. LEIVERS,  
Clerk of District Court.

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[Endorsed]: No. 15070. United States Court of Appeals for the Ninth Circuit. Territory of Alaska, Appellant, vs. American Can Company, Fidalgo Island Packing Company, Libby McNeill & Libby, Inc., Nakat Packing Company, New England Fish Co., P. E. Harris Company, Inc., Pacific & Arctic Railway & Navigation Co., and Oceanic Fisheries Co., Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Division Number One.

Filed March 16th, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 15,070

**TERRITORY OF ALASKA,**

**Plaintiff,**

**vs.**

**AMERICAN CAN COMPANY,**

**Defendant,**

**FIDALGO ISLAND PACKING COMPANY,**

**Defendant,**

**LIBBY, McNEILL & LIBBY, INC.,**

**Defendant,**

**NAKAT PACKING COMPANY,**

**Defendant,**

**NEW ENGLAND FISH COMPANY,**

**Defendant,**

**P. E. HARRIS COMPANY, INC.,**

**Defendant,**

**PACIFIC & ARTIC RAILWAY & NAVIGATION  
COMPANY,**

**Defendant,**

**OCEANIC FISHERIES COMPANY,**

**Defendant,**

**APPELLANT'S STATEMENT OF POINTS  
AND DESIGNATION OF RECORD**

Comes now appellant above named and adopts the  
Designation of Record and Statement of Points to

be relied on by Appellant, filed with the clerk of the district court, as his statement of points and designation to be relied upon in the United States Court of Appeals, and prays that the whole of the record as filed and certified by printed.

Dated at Juneau, Alaska, this 22nd day of March, 1956.

**J. GERALD WILLIAMS,**  
Attorney General;

By /s/ **HENRY J. CAMAROT,**  
Assistant Attorney General,  
Attorneys for Appellant.

**[Endorsed]: Filed May 23, 1956.**

[fol. 77] **MINUTE ENTRY OF ARGUMENT AND SUBMISSION—  
April 24, 1957**

(Omitted in printing)

[fol. 78] **IN UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINIONS AND  
FILING AND RECORDING OF JUDGMENT—June 27, 1957**

Ordered that the typewritten opinion, and dissenting opinion of Healy, CJ, this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the majority opinion rendered.

[fol. 79] **IN UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**No. 15,070—June 27, 1957**

**TERRITORY OF ALASKA, Appellant**

**v.**

**AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY,  
LIBBY, McNEILL & LIBBY, INC., NAKAT PACKING COMPANY,  
NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and  
OCEANIC FISHERIES CO., Appellees**

**Appeal from the District Court for the District of Alaska,  
Division Number One**

**Before HEALY, LEMMON, and FEE, Circuit Judges.**

**OPINION—June 27, 1957**

**LEMMON, Circuit Judge.**

In the face of the Alaska Legislature's mandate in 1953 that the Territory's Property Tax Act of 1949 "is hereby

repealed," with certain specific and limited exceptions embodied in a special saving clause clearly not applicable here, the appellant insists that it can still "collect accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952."

It is urged that this saving clause merely bestowed an "important *additional right* in the form of a pecuniary advantage [to] municipalities, schools and public utilities . . . but denied to the Territorial Government"; but that this "alleged special savings [*sic*] clause" should not protect the appellees from being held "personally liable for the unpaid taxes" for the earlier years.

In this connection, we may observe in passing that both parties repeatedly refer in their briefs to "savings" clauses—the appellant 44 times and the appellees 58 times. This [fol. 80] palpable error, in which the Court below joined, and which, because of its frequency, can scarcely be regarded as typographical, occasionally is encountered even in some legal encyclopedias. For example, in 50 Am. Jur., Statutes, § 528, page 535, under the caption "*Express Savings Provisions in Repealing Statutes*," we find the form "savings" and the form "saving" each used three times in the same paragraph, each time followed by the word "clause."

Since we are here dealing with statutory construction and not with bank accounts, "saving" is, of course, the precise word. See *South Carolina v. Gaillard*, 1880, 101 U.S. 433, 438; *Bridges v. United States*, 1953, 346 U.S. 209, 227, note 25; *Bouvier*, Third Revision, 1914, volume 2, page 3007; 82 C.J.S. Statutes § 440, pages 1014-1018; *Webster's New International Dictionary*, Second Edition, Unabridged, 1955, page 2223, *sub verbis* "saving clause."

In his argument supporting the finespun thesis that the appellees owe these back taxes in the face of a plain and—as to them—unqualified repeal, able counsel for the appellant displays more agility than persuasiveness.

### 1. *Statement of the Case*

On February 21, 1949, the Territorial Legislature of Alaska enacted the first general "Property Tax Act" of the Territory, Chapter 10, Session Laws of Alaska, 1949, hereinafter sometimes referred to as Chapter 10.



On March 12, 1953, the Property Tax Act was repealed by Chapter 22, Session Laws of Alaska, 1953, pages 73-74, which was passed over Governor Ernest Gruening's veto. Because of the crucial relevance of that repealing statute to the present lawsuit, we copy it below in full:

**"To repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; *excepting from repeal certain taxes and tax exemptions*; and declaring an emergency.**

**"Be it enacted by the Legislature of the Territory of Alaska:**

**"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.**

[fol. 81] **"Section 2. Section 1 of this Act shall not be applicable to:**

**(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and**

**(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.**

**"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval." [Emphasis supplied.]**

It may here be explained that Section 6(h) of Chapter 10, *supra*, refers to "incentive exemptions" that the Tax Commissioner of Alaska was authorized to grant to "new industries," and is not relevant to the present controversy.

Between April and May of 1955, the appellant filed eight separate complaints against the appellees seeking to recover

a total of more than \$175,000 in taxes, interest and penalties for various years between 1949 and 1952, inclusive. The appellees point out that these suits "were all personal actions against the several [appellees] seeking to recover taxes on both real and personal property combined without any attempt at segregation of one type of property from the other."

Each appellee filed a separate and identical motion to dismiss, alleging that the complaint did not state a claim upon which relief could be granted, and that the action was not brought within the time required by law.

On May 5, 1955, the appellant filed a counter motion to strike against four of the appellees, requesting the Court below to strike the motion to dismiss. The Court denied the motion to strike and granted the appellees' motion to dismiss the eight complaints, for the reasons stated in the Court's opinion, which was filed on January 4, 1956. 137 F. Supp. 181.

[fol. 82] On February 7, 1956, the appellant filed a notice of appeal from the order of the Court below dismissing the complaints. On November 14, 1956, we ordered that the appeal "be dismissed for want of jurisdiction because of the lack of final judgment," and we remanded the cases to the Court below.

On December 11, 1956, the District Court filed a final judgment decreeing (1) that the complaints alleging a personal liability be dismissed; (2) that the complaints and the "numbered causes be dismissed on the merits for the reasons stated in the Court's opinion of January 4, 1956," *supra*; and (3) that neither the taxes nor the remedy under Chapter 10 "survived the repeal found in Chapter 22 SLA 1953," etc.

On the same day, a second notice of appeal was filed in this case. It is this second appeal that is now before us.

Four questions are presented by the appellant:

(1) Whether the Property Tax Act is a tax on the appellees for which they are personally liable, or is merely a tax upon their property;

(2) Whether the appellant is without a remedy to collect and enforce taxes due under the Property Tax Act;

(3) Whether the language in Chapter 22, *supra*, repealing the Property Tax Act, is a "special saving clause" nullifying the appellant's right under the "Territorial General Saving Clause," *infra*, "to collect accrued and unpaid taxes for" 1949-1952.

(4) Whether, in interpreting Chapter 22, *supra*, the terms and expression of which are asserted to be ambiguous, "the Court is limited in ascertaining the legislative intent to only those statutory constructional aids of which it may take 'judicial notice' or whether it may refer to extrinsic aids, otherwise admissible under the laws of evidence, which bear directly on such intent."

In our view, Question No. 3 is determinative of the issue.

## 2. *Alaska's General Saving Statute*

Section 19-1-1, Alaska Compiled Laws Annotated, 1949, as amended by Chapter 4, Extraordinary Session Laws of Alaska, 1955, reads as follows:

[fol. 83] "*Effect of repeals or amendments.* The repeal or amendment of any statute shall not affect an offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."

### 3. *The Saving Section of the Repealing Act Overrides the General Saving Statute.*

Section 2 of the Act of 1953, hereinafter the repealing act, must prevail over Section 19-1-1 of Alaska Compiled Statutes Annotated, hereinafter the general saving statute.

At the outset, we note that the very title of the repealing act underlines one of its main purposes; namely, that of "*excepting from repeal certain taxes and tax exemptions.*"

In *John J. Sesnon Co. v. United States*, 9 Cir., 1910, 182 F. 573, 576, certiorari denied, 1911, 220 U.S. 609, a case that came to this Court from Alaska, Judge Morrow observed:

"Where doubt exists as to the meaning of the statute, the title may be looked to for aid in its construction."

In the repealing statute before us, the participial phrase, "*excepting from repeal*" certain taxes, etc., without any qualification to the word "*excepting*," indicates that the term is to be taken in its ordinary restrictive sense.

Considering the repealing act as a whole, we should bear in mind that being a *special* or, in the words of the Supreme Court, a "*specific*" enactment, it qualifies and furnishes [fol. 84] exceptions to the *general* repeal law of Alaska—Section 19-1-1, dealing with the "Effect of repeals or amendments," *supra*.

More than threescore and ten years ago, this rule was already "well settled" in Anglo-American law.

In *Townsend v. Little*, 1883, 109 U.S. 504, 512, the Court observed:

"According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to priority of enactment, may subsist together, *the specific qualifying and supplying exceptions to the general*, this provision for the execution of a *particular* class of deeds is *not* controlled by the law of the territory requiring deeds *generally* to be executed with two witnesses. [American and English authorities cited.]" [Emphasis supplied.]



The principle is merely a corollary of the familiar maxim, *Expressio unius est exclusio alterius*, as was pointed out in *Rybolt v. Jarrett*, 4 Cir., 1940, 112 F.2d 642, 645:

"There is some force here in the maxim *Expressio unius est exclusio alterius*. When in a statute of such clean cut restrictive force, the legislature undertook to make certain explicit exceptions, it seems a fair implication that the legislature intended to exclude other exceptions, and thus to make the statute say what it means and mean what it says."

Similarly, in *Jones v. H.D. & J.K. Crosswell*, 4 Cir., 1932, 60 F.2d 827, 828, it was said:

"Being exceptions carved out of the general rule, intangible property not *specifically* mentioned as being tangible property must be excluded. The maxim '*expressio unius est exclusio alterius*' applies. It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed. [Many cases cited.]" [Emphasis supplied.]

The principle is well established in California. In *Los Angeles Brewing Company v. City of Los Angeles*, 1935, [fol. 85] 8 C.A. 2d, 391, 398, cited in the *Stanford Law Review* of January, 1949, Volume 1, Number 2, Page 371, Note 2, the Court remarked:

"As section 22 or Article XX [of the Constitution of California] was adopted last, as it is special in dealing with this subject of the control, licensing and regulating of 'the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquor within the state' and as it shows an intention to remove the licensing for revenue of those so dealing in intoxicating liquors from the realm of a municipal affair to that of a matter of general state-wide concern, its provisions must be held to control over those of section 6 of article XI of the Constitution [authorizing cities and towns to legislate "in respect to municipal affairs"] and vest in the state the exclusive and sole right to license for

the purpose of revenue those engaged in the business of manufacturing, dealing in or handling intoxicating liquors." [Emphasis supplied.]

So far we have looked at the authorities dealing with the *general* application of the principle of "The expression of one is the exclusion of others." But there is a leading and oft-quoted decision that applies the venerable maxim to the precise question that we are here considering; namely, the conflict between a *general* repeal provision and a *special* repeal provision.

We refer to *State v. Showers*, 1885, 34 Kan. 269, 8 P. 474, 476-477, where the entire question was lucidly discussed:

"The offense of which the defendant was found guilty was committed in violation of section 7 of the prohibitory liquor law as enacted in 1881, and the prosecution for such offense was commenced and conducted to its final termination after said section had been amended and the original section repealed by an act taking effect March 10, 1885; and the first question presented to this court, . . . is whether the defendant could be punished for a violation of the old section when the prosecution had not been commenced until after it had been amended and repealed." [Page 475]

The general saving statute of Kansas at that time read in part as follows:

[fol. 86]. "The repeal of a statute does not revive a statute previously repealed, nor does such repeal effect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the statute repealed." (Compiled Laws, 1879, c. 104, § 1)

It will be observed that the above Kansas statute was closely similar in effect to the General Saving Act of Alaska, § 19-1-1, *supra*. On the other hand, § 19 of the repealing act of 1885, *supra*, contained the following *special saving* proviso:

"All prosecutions pending at the time of the taking effect of this act shall be continued the same as if this act had not been passed."

With this legislative and factual situation before it, the Supreme Court of Kansas said:

"The question as to what should be repealed and what saved was before the legislature. They had the entire subject-matter thereof under consideration, and evidently intended to cover the entire ground; and evidently intended that nothing should be repealed except what they expressly repealed, and that nothing should be saved except what they expressly stated should be saved. They expressly saved some things; therefore it must be inferred that they intended to save no others. *Expressio unius est exclusio alterius*. The legislature evidently intended that the special saving clause which they enacted in section 19 of the Act of 1885 should take the place of all others, so far as prosecutions under original section 7 were concerned; and *that in cases where the special saving clause could apply the general saving statute should have no operation*. 'It is a well-settled rule of construction that specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which might otherwise be broad enough to include it.' *Felt v. Felt*, 19 Wis. 196. 'It is familiar law that a later statute will operate as a repeal of a former, although it contains no express repeal, and even though its provisions are not absolutely repugnant to those of the former, whenever it is obvious that the [fol. 87] one was intended as a substitute for the other.' [Cases cited.]

"If, however, the saving clause in section 19 of the act of 1885 was not intended by the legislature to cover the entire ground, and to be a substitute for the general saving statute so far as cases like this are concerned, then the saving clause contained in section 19 of the Act of 1885 has no office to perform, but is absolutely worthless, for the general saving clause would save all

that it saves and very much more. Such an interpretation of the law as this would violate all proper canons of construction. It would in effect say that the legislature had done the very foolish thing of enacting a saving clause which can have no real operation at all, and can subserve no actual purpose whatever. 'It is a well-settled rule that when any statute is revised, or one act framed from another, some parts being omitted, the parts omitted are not to be revived by construction, but are to be considered as annulled. To hold otherwise would be to impute to the legislature gross carelessness or ignorance, which is altogether inadmissible.' *Ellis v. Paige*, 18 Mass. 45." [Emphasis supplied.]

Emphasizing that the *general* saving statute comes into play only where the repealing act is "silent as to whether the rights and remedies" under the old law are to be saved, the Supreme Court of Kansas said in conclusion:

"The theory upon which it has been held by this court that the general saving statute is applicable in cases of repeals is that where the repealing statute is *silent* as to whether the rights and remedies which had previously accrued under the repealed statute should be saved or not, such silence indicates an intention on the part of the legislature that the general saving statute should be left to operate upon the repeal, and to save all such rights and remedies as come within the saving provisions of the general saving statute. [Case cited.] In the present case, however, the repealing statute is not *silent*, for it itself contains a saving clause which shows that it was not the intention of the legislature to rely upon the general saving statute. [fol. 88] "For the reasons above stated we think the present action cannot be maintained. The judgment of the court below will therefore be reversed and cause remanded for further proceedings.

"(All the justices concurring.)" [Pages 477-478]<sup>1</sup>

<sup>1</sup> See also, on this question of the legislators' intention "that nothing should be saved except what they expressly stated should be



Both on reason and authority, therefore, we hold that § 2 of Chapter 22 of 1953, the repealing statute, means precisely what it says; namely, that Chapter 10 of the Session Laws of Alaska, 1949, shall "be and it is hereby repealed," except "any taxes which have been levied and assessed by any municipality, school or public utility district," etc., including such taxes levied and assessed for the "current fiscal year"—taxes which are not in controversy here, and which alone are saved from repeal.

With the above exclusive exception, Chapter 10, Session Laws of Alaska, 1949, is no longer of any force or effect—as to past, present, or future years.

4. *The District Court Did Not Err in Excluding from Evidence H. B. No. 3 and S. B. No. 5.*

The appellant asserts that "Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953".

Specifically, the appellant urges as error the lower court's rejection of "both the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature".

The record shows that only House Bill No. 3 was offered in evidence. The appellant counters with the statements that Senate Bill No. 5 "was identical in all respects to House Bill No. 3"; that an authenticated copy was formally filed [fol. 89] in the District Court with the Territory's brief; and, "alternatively", that the Senate bill "could have been called to the Court's attention by citing page 32 of the 1949 Senate Journal (which is conceded by the appellees to be subject to judicial notice) wherein the word-for-word likeness of the *title* of Senate Bill No. 5 and House Bill No. 3 clearly indicates both bills to be indistinguishable in form, design or purpose".

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saved", *Wilmington Trust Co. v. United States*, Del., 1928, 28 F.2d 205, 208; and on the general application of the "*expressio unius*" maxim, see also *Ainsworth v. Bryant*, 1949, 34 C.2d 465, 472, 473, 211 P.2d 564, 568; 50 Am. Jur. §528, page 535; 82 C.J.S. §440(a), page 1015.

We accept the appellant's "alternative" point at its face value, and hold that the title of the Senate bill and the House bill indicate that they are "indistinguishable". By a parity of reasoning, however, we also hold that the title of House Bill No. 3 as introduced and the title of the House bill as enacted "clearly indicate" their differences.

As originally introduced, the bill, according to its title, was offered for the purpose of abrogating and repealing all accrued and unpaid taxes levied thereunder"; while the Act as passed carried a title showing that the new statute was "excepting from repeal certain taxes and tax exemptions". The extract from the Senate Journal printed in the appendix to the appellant's opening brief in this Court also shows that a "new Section 2" dealing with taxes levied "by any municipality, school or public utility district", etc., *supra*, was added by the Senate, and was concurred in by the House.

These changes in the House bill before its final enactment, however, are not relevant here.

In *Trailmobile Co. v. Whirls*, 1947, 331 U.S. 40, 60-61, the Supreme Court thus disposed of attempts to interpret statutes by minutely tracing "legislative maneuvers":

"These reasons, founded in the literal construction of the statute and the policy clearly evident on its face, are sufficient for disposition of the case. They are not weakened by the Government's strained and unconvincing citation of the Act's legislative history.

"That argument is grounded in conclusions drawn from changes made without explanation in committee [as in the statute before us] with respect to various provisions finally taking form in §8, changes affecting, [fol. 90] bills which eventually became the Selective Training Service Act and the National Guard Act, 54 Stat. 858. Apart from the inconclusive character of the history, the Government's contention assumes that the only alternatives presented by the final form of the bill were indefinite duration for the incidents of the employment named and none at all. This ignores the other possibilities considered in this opinion, including duration for a reasonable time. Moreover, as has been noted, the most important committee changes relied

*upon were made without explanation. The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers." [Emphasis supplied.]*

We hold that the trial court did not commit prejudicial error in excluding evidence of the original House Bill No. 3 and the amendments thereto.

From the foregoing, it will be seen that, since the limited saving clause did not preserve enough of the repealed tax statutes to be applicable against the taxpayers who are the appellees here, they are not liable either *in rem* or *in personam*. Any discussion, therefore, of the *personal* liability of the appellees, as contradistinguished from the *in rem* liability of their property, would be moot.

In our view, the appellees are not liable either *in rem* or *in personam*, since the repealing act, as has been shown, completely wiped out *any* tax liability except as to municipal, school, or public utility district taxes, which are concededly not involved in the instant case.

### 5. Conclusion

Accordingly, it is the holding of this Court that the saving section of the repealing act relating to the Alaska Property Tax Law overrides the general saving statute; and that the Court below did not err in excluding from evidence House Bill No. 3 and Senate Bill No. 5.

The judgment of the District Court is therefore

*Affirmed.*

[fol. 91] HEALY, Circuit Judge, Dissenting

I disagree with the holding of the majority that section 2(a) of chapter 22, Alaska Session Laws of 1953, nullifies the effect here of the Alaska General Savings Statute, section 19-1-1, Alaska Compiled Laws 1949. The relevant provisions of the latter are quoted below.<sup>1</sup> It is not at all clear

<sup>1</sup> "Effect of repeals or amendments. The repeal or amendment of any statute shall not affect an offense committed or any act done

that it was the legislative intent to wipe out the liability of those in the situation of appellees for unpaid taxes levied for the years 1949 through 1952, but rather that section 2(a) had another and different purpose.

Significantly, the history of the 1953 legislation shows that section 2 of the original bill was deleted in the course of the bill's consideration. That section in unmistakable terms had forgiven and abrogated all pre-1953 taxes. Concurrently, the phrase "and abrogating and repealing all accrued and unpaid taxes levied thereunder" was deleted from the bill's title. Thus the legislature had before it in the original bill clear language which would have forgiven the taxes here in question. It chose, instead, to reject the language.

In material part section 2(a) of the Act as finally passed reads:

"Section 2. Section 1 of this Act shall not be applicable to: (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; . . ."

In light of what has been said above, the section is fairly construable as intending no more than a grant to the municipalities and school and public utility districts—but not to the Territory itself—of the right to levy and collect taxes for the then current year, namely 1953, both before and after the repealing act had taken effect. There was a logical reason for granting this right to these local

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or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. . . ."



districts in that the legislature may well have felt it undesirable to interfere with their current fiscal programs, whether or not the levies for that year had yet been made. As so construed, section 2(a) is readable in para materia with the General Savings Statute, above quoted, as not interfering with the collection of unpaid 1949-1952 taxes, either of the Territory or of the taxing districts.

As was recognized by the trial judge but is not mentioned in the majority opinion here, it is a fundamental rule of statutory construction that general savings clauses or statutes preserve rights and liabilities which have accrued under an act repealed, and that they operate to make applicable in designated situations the law as it existed before the repeal, *unless such application is negatived by the express terms or clear implication of a particular repealing act.*

My brothers, as I understand them, do not contend that such application is negatived by the express terms of the 1953 legislation, but rather is to be gathered by implication. To me, however, the legislation in the respects here in question is fundamentally ambiguous, both in its meaning and in the motives inspiring its enactment. Accordingly I dissent from the majority holding.

[File endorsement omitted]

[fol. 93] IN UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 15070

TERRITORY OF ALASKA, Appellant,

v.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY,  
LIBBY, McNEILL & LIBBY, INC., NAKAT PACKING COMPANY,  
NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and  
OCEANIC FISHERIES CO., Appellees.

**JUDGMENT—Entered June 27, 1957**

**Appeal from the District Court for the District of Alaska,  
Division Number One.**

**This cause came on to be heard from the District Court for the District of Alaska, Division Number One, and was duly submitted.**

**On consideration whereof, it is now here ordered and adjudged by this Court, that the Order of the said District Court in this cause be, and hereby is affirmed.**

**[File endorsement omitted]**

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**[fol. 94] IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**No. 15,070**

**[Title omitted]**

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**Appeal from the District Court for the District of Alaska,  
Division Number One.**

**APPELLANT'S PETITION FOR A REHEARING—Filed July 25, 1957**

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*To the Honorable William Healy, Dal M. Lemmon, James Alger Fee, Judges of the United States Court of Appeals for the Ninth Circuit, who constituted the Court in the original hearing:*

**Petitioner Territory of Alaska prays that this Court grant rehearing of its judgment of June 27, 1957, holding [fol. 95] that the repealing statute, Chapter 22, SLA 1953, completely wiped out any tax liability of the appellees herein and any other person who failed or refused to pay taxes imposed by Alaska's General Property Tax Act, Chapter 10, SLA 1949.**

**The reasons for granting rehearing in this cause are as follows:**

(1) *Chapter 22, SLA 1953, as construed by the majority opinion, violates the uniformity clause of the Organic Act and the Equal Protection Clause of the Constitution.*

The majority's construction of Chapter 22, SLA 1953, which imputes to the Territorial Legislature an intent to forgive taxes lawfully imposed by Chapter 10, SLA 1949, while at the same time impliedly ruling that those taxpayers who complied with the law are subject to full tax liability, means that Chapter 22, as so interpreted, violates the uniformity clause of Alaska's Organic Act and the Equal Protection Clause of the United States Constitution.

(2) *The majority's construction of Chapter 22 results in an unfair and unjust consequence' never intended by the Legislature.*

50 Am. Jur., *Statutes*, Section 368:

"The results which will follow one construction or another of a statute is often a potent factor in its interpretation. \* \* \* Indeed, there are cases in which the consequences of a particular construction are, in and of themselves, conclusive as to the correct solution of the question. In any event, it is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. Where the language of a statute is doubtful and the necessity for construction arises, the court may consider whether the legislature could have intended a construction that would be highly injurious, rather than one beneficial and harmless. Under such circumstances, it is presumed that undesirable consequences were not intended; to the contrary, it is presumed that the statute was intended to have the most beneficial operation that the language permits. It is accordingly a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a beneficial operation of the law, and a construction of which the statute is fairly susceptible, is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences. \* \* \*

*Sutherland on Statutory Construction*, 3rd Ed., Vol. 3, Sec. 6006, p. 149:

"\* \* \* A restricted interpretation is usually applied where the effect of a literal interpretation will make for injustice and absurdity, or, in the words of one court, the language must be so unreasonable 'as to shock general common sense.'"

[fol. 96] Since Chapter 22, SLA 1953, as Judge Healy pointed out, is fundamentally ambiguous both in its meaning and the motives inspiring its enactment, the construction given it by this Court contravenes a well-established canon of statutory construction, namely, that where a statute is ambiguous in terms and fairly susceptible of two constructions, the injustice which may follow one construction or the other may properly be considered. And it is the duty of the Courts to render that interpretation as will best subserve the ends of justice. It is therefore a reasonable and safe rule of construction to resolve an ambiguity in favor of that interpretation which will result in a fair application of the statute.<sup>2</sup>

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[fol. 97]     **IN UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**MINUTE ENTRY OF ORDER DENYING PETITION FOR REHEARING  
—December 4, 1957**

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellant, filed July 25, 1957, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

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[fol. 98] Clerk's Certificate to foregoing transcript omitted in printing.

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<sup>2</sup> 50 Am. Jur., *Statutes*, Sec. 370, p. 376.

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[fol. 99] IN SUPREME COURT OF THE UNITED STATES  
No. 833, October Term, 1957

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TERRITORY OF ALASKA, Petitioner,

v.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY,  
LIBBY, McNEILL & LIBBY, INC., ET AL.

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ORDER ALLOWING CERTIORARI—April 7, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Harlin took no part in the consideration or decision of this application.

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U. S. SUPREME COURT, U. S.  
FILED  
MAR 4 1958  
JOHN T. FEY, Clerk

# In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. ~~100~~ 40

TERRITORY OF ALASKA,

*Petitioner,*

vs.

AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI  
to the United States Court of Appeals  
for the Ninth Circuit.

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# **In the Supreme Court**

**OF THE**

## **United States**

**OCTOBER TERM, 1957**

**No.**

**TERRITORY OF ALASKA,**

*Petitioner,*

**vs.**

**AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,**

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI**

**to the United States Court of Appeals  
for the Ninth Circuit.**

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on June 27, 1957.

**CITATIONS TO OPINIONS BELOW.**

The opinion of the District Court is found in the printed transcript of record used in the Court below, at pp. 56-57, and is reported in 137 F.Supp. 181. The opinion of the Circuit Court of Appeals, Ninth Circuit, is printed in the Appendix hereto, *infra*, at pp. 29-48, and is reported in 246 F.2d 493.

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**JURISDICTION.**

The judgment of the Circuit Court of Appeals was entered on June 27, 1957 (R. 93). A timely petition for rehearing filed on July 25, 1957 (R. 94) was denied on December 4, 1957 (R. 94). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

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**QUESTIONS PRESENTED.**

The United States Court of Appeals for the Ninth Circuit has construed Chapter 22, Session Laws of Alaska 1953, which repealed the Alaska Property Tax Act, as forgiving the liability of delinquent-taxpayers for taxes accruing under that act.

Whether the District Court was correct in excluding evidence of the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature.

Whether the Court below correctly interpreted Section 2 of Chapter 22, Session Laws of Alaska 1953, as a special saving clause which overrides the Gen-



eral Saving Statute of Alaska, Section 19-1-1, Alaska Compiled Laws Annotated 1949.

Whether the special saving clause, if the Court below is correct in construing it as exempting delinquent taxpayers from liability, is valid under the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Section 9 of Alaska's Organic Act, 48 U.S.C. 78; § 48-1-1, ACLA 1949.

#### **STATUTES INVOLVED.**

The statutory provisions involved are the following:

U. S. Const. amend. V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. Const. amend. XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

48 U.S.C. Sec. 23, Sec. 2-1-1, ACLA 1949:

"Constitution and laws of the United States extended: Continuation of existing laws. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

48 U.S.C. Sec. 78, Sec. 48-1-1, ACLA 1949:

"Requirement of uniform taxes: Assessments. All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims, which are also unimproved, may be valued at the price paid the United States

therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof."

**Section 19-1-1, ACLA 1949:**

"Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made."

Chapter 10, Session Laws of Alaska 1949, the Alaska Property Tax Act, appears in the Appendix, *infra*, pp. 1-28.

**Chapter 22, Session Laws of Alaska 1953:**

"An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.



**"Be it enacted by the Legislature of the Territory of Alaska:**

**"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.**

**"Section 2. Section 1 of this Act shall not be applicable to:**

- (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and**
- (b) any exemptions from the taxes referred to in subsection (a) in this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.**

**"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."**

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#### **STATEMENT.**

**1. In 1949, the Alaska Territorial Legislature enacted the first general property tax act of the Territory, which was Chapter 10, Session Laws of Alaska, 1949. The validity of the act was challenged in ex-**



tensive litigation, with the act being finally upheld as constitutional.<sup>1</sup>

During the pendency of these litigations, more than 8,689 taxpayers, among whom the appellees are numbered, became delinquent in excess of \$1,290,000.00, while at the same time, 11,504 people voluntarily paid their taxes in excess of \$400,000.00.

2. In 1953, the subject tax statute was repealed by Chapter 22, Session Laws of Alaska, 1953.

3. Between April and May of 1955, the appellant filed eight separate Complaints, seeking to recover a total amount of over One Hundred Seventy-five Thousand Dollars (\$175,000.00) in taxes, interests and penalties which had accrued and were due and owing by the appellees for the years 1949, 1950, 1951 and 1952. (R. 3, 8, 14, 19, 25, 29, 33 and 37.)

4. On either the last day or the day before the last day within which to answer appellant's Complaints, each appellee filed a separate, identical Motion to Dismiss, alleging:

"(1) That the Complaint does not state a claim against the defendant upon which relief can be granted.

"(2) That the action was not brought within the time required by law." (R. 6, 11, 17, 22, 28, 32, 36 and 40.)

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<sup>1</sup>*Hess v. Mullaney*, 91 F.Supp. 139, reversed in *Mullaney v. Hess*, 189 F.2d 417; *Hess v. Mullaney*, 102 F.Supp. 490, sustained in *Hess v. Mullaney*, 213 F.2d 635.

5. On May 5, 1955, the appellant filed a counter motion against four of the appellees requesting that the United States District Judge enter an order (1) striking the Motion to Dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within ten days thereafter. Appellant listed the following reasons for its motion:

1. That defendant's Motion to Dismiss fails to state the grounds therefore with particularity as is required by Rule 7(b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the Motion to Dismiss is a dilatory pleading. (R. 7, 12, 18 and 23.)

At the hearing on appellant's Motion to Strike, the second ground was abandoned in view of *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated, Limited*, 185 F.2d 196, 202 (9th Cir.). (R. 41.)

Appellees' principal argument in answer to appellant's contention that Rule 7(b) had not been complied with was that their Motion to Dismiss conformed to Form 19 of the Appendix Forms to the Federal Rules of Civil Procedure and was therefore stated with the sufficient particularity. The late Honorable George W. Folta sustained appellees' argument and denied appellant's Motion to Strike.

6. The appellees' motions to dismiss were consolidated for hearing (R. 25, 44), and the Court convened on October 28, 1955, and heard arguments thereon (R. 46).

7. On January 21, 1956, the District Court granted appellees' Motion to Dismiss the Complaint (R. 69) for the reasons stated in its opinion (R. 56).

8. On February 7, 1956, appellant filed Notice of Appeal from the Order of Dismissal to the United States Court of Appeals for the Ninth Circuit, and also its Statement of Points upon which appellant intended to rely. (R. 70-73.)

9. On June 27, 1957, the decision of the District Court was affirmed by the United States Court of Appeals for the Ninth Circuit by a divided Court. (R. 79-92.) The majority stated that four questions were presented by the appellant (R. 82) and that the third question determined the issue. That question was whether the language in Section 2 of Chapter 22, Session Laws of Alaska 1953, which repealed the 1949 property tax act, constituted a special saving clause which nullified the Alaska General Saving Statute, which is Section 19-1-1, Alaska Compiled Laws Annotated, 1949. The majority held such was the case and that no liability against the appellees survived the repeal. It was also held that the District Court was correct in excluding from evidence House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature on the basis of *Trailmobile Company v. Whirls*, 1947, 331 U.S. 40, 60-61. (R. 89.) The Court did not decide questions number one and number two (R. 82) because they stated that the foregoing answers were determinative of the issue. Judge Healy, in dissenting (R. 91), argued that the excluded Bills were material to show



legislative intent and, further, that the special saving clause and the Alaska General Saving Statute could be read in *pari materia*. Judge Healy also pointed out that the application of a general saving clause must be negated by the *express* terms or *clear* implication of a particular repealing act.

10. The appellant, the Territory of Alaska, filed a timely petition for rehearing on July 25, 1957, which was denied on December 4, 1957 (R. 94). In this petition, which has been certified as a portion of the record and filed in this Court, your appellant injected the issue of constitutionality which of necessity arose from the holding of the majority of the Court below. The present posture of the case indicates that, as the Court of Appeals has now interpreted the repealing act, it is unconstitutional since it violates the Organic Act of the Territory of Alaska and the Fifth and Fourteenth Amendments of the United States Constitution.

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#### REASONS FOR GRANTING WRIT.

1. The United States Court of Appeals for the Ninth Circuit has construed a Territorial statute in such a manner as to produce a result which is in discord with the accepted and usual course of judicial proceedings and which is in universal conflict with constructions of taxation limiting provisions of both Federal and State constitutions.

The interpretation of the Court below makes Chapter 22 an unconstitutional act. The act, as inter-



preted, now constitutes a denial of due process and of equal protection of the laws under the Fifth and Fourteenth Amendments to the Federal Constitution. It further violates a provision of the Organic Act of the Territory of Alaska, 48 U.S.C. 78; § 48-1-1, ACLA 1949. Section 9 of the Organic Act provides:

"All taxes shall be uniform on the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, . . ."

Your appellant states that there has never arisen a case, wherein the facts are fairly similar, in which the courts have permitted such a statute as Chapter 22 is now construed to be, to stand under the above-noted Federal Constitutional provisions or under State Constitutional restrictions similar to Section 9 above. The effect of this construction is to permit a legislature to tax a class whose only distinction from tax exempted citizens likewise situated is that the former class is willing to pay under a valid law and is not delinquent. Such a construction makes the act unconstitutional notwithstanding that the statute in question is a repealing act which *forgives* the tax as to one class, rather than a taxing statute which *exempts* a particular class. The effect is the same and Constitutional limitations, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly. *Macallen Co. v. Commonwealth of Mass.*, 279 U.S. 620 (1929).

Your appellant earnestly agrees with the proposition expressed by the Supreme Court of Florida in *Simpson, County Tax Collector v. Warren*, 106 Fla. 688, 143 So. 602, 603:

"Where a statute which provides for the collection of a particular tax is valid, and taxes from some have been collected under it, the Legislature is without power to unconstitutionally discriminate against, and deny the equal protection of the laws to the class of taxpayers who have already paid such tax while the statute was in force, by arbitrarily remitting or wiping out by repeal of the statute or otherwise the liability of those who have by their delinquency evaded or postponed payment for the time being."

and, further, with that in *State v. Butts*, 111 Fla. 630, 149 So. 746, 755:

"It cannot well be denied that, when the proper tax officers have legally placed upon each individual his share of the public burden of taxation, the Legislature of the state has no right to lift it from him to the prejudice of other taxpayers, or to the detriment of the public credit, either in the form of an abatement before, or in the form of a gift after, collection, or by a return to the taxpayer unburden his forfeited property, for this being done, a deficiency results in the public revenues which must be supplied by the imposition of additional tax assessments and levies upon the nonfavored class, thereby violating the fundamental constitutional requirement of all taxation, which is that it shall bear equally upon all, with special privileges to none."

Similar views are found in the following:

*Shepard, et al. v. Hidalgo County, et al.*, 83 S.W. 2d 649, 653;

*Lincoln Mtg. and Trust Co. v. Davis*, 76 Kan. 639, 92 P. 707;

*State, ex rel. Coe v. Fyler*, 48 Conn. 145;

*State v. Armstrong*, 17 Utah 166, 53 P. 981.

In both *Richey v. Wells*, 123 Fla. 284, 166 So. 817, and *State, ex rel. Kain v. Fischl, County Treasurer*, 94 Mont. 92, 20 P.2d 1057 (later overruled on different grounds), the respective courts declared that the selection and classifying of delinquent taxpayers as beneficiaries of special tax concessions without the same benefits being equivalently available to non-delinquent taxpayers violated the Federal Constitution.

More often remissions of taxes are denied under various state constitutional provisions such as requirements of uniform taxation and equal protection: *Huntington v. Worthen* and *Little Rock and Fort Smith Railway v. Worthen*, 120 U.S. 97 (1887); *Thompson v. Auditor General*, 261 Mich. 624, 247 N.W. 360; *Ranger Realty Co. v. Miller*, 102 Fla. 378, 136 So. 546; *State, ex rel. Matteson v. Luecke*, 194 Minn. 246, 260 N.W. 206; *State, ex rel. Hustetter v. Hunt*, 132 Ohio St. 568, 9 N.E.2d 676; *Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738; *State, ex rel. Coe v. Fyler, supra*; *State v. Armstrong, supra*.

Generally, where the remission of accrued taxes is permitted, it is permitted because the remission is uniform upon all taxpayers, *Clements v. Peerless*



*Woolen Mills*, 197 Ga. 296, 29 S.E.2d 175, or that uncollectible or doubtful claims can be compromised, *Opinion of the Justices*, No. 89, 251 Ala. 96, 36 So. 2d 480, or that the classification is reasonable, *State, ex rel. Anderson v. Rayner*, 60 Idaho 706, 96 P.2d 244; or that a remission of penalties and interest on delinquent taxes is permissible because the situation is distinguished from the case of remission of the tax itself, *State, ex rel. Sparling v. Hitsman*, 99 Mont. 521; 44 P.2d 747, or because the goal sought was to return land which would bring less than the accumulated taxes and penalties at a forced sale to the tax rolls by permitting the sale of certificates at less than such value, and it was not shown that the taxpayer was favored in the sale of the certificates, *Ranger Realty Co. v. Miller, supra*, or that the non-delinquent taxpayers are to receive credits for *ad valorem* special assessments paid by them but which are relieved as to delinquent taxpayers, *San Bernardino County v. Way*, 18 Cal.2d 647, 117 P.2d 354, and for other reasons distinguishable from the instant remission.

This Court, in *Illinois Central Railroad Co. v. Commonwealth of Kentucky*, 218 U.S. 551, 563 (1910), in denying that an assessment upon taxpayer violated the equal protection clause, stated:

"It does not satisfactorily appear that other railroad corporations were not assessed in the same way or at the same time, or, assuming that they were so assessed, that they were not liable to pay the taxes accordingly."



The clear implication was that, had other taxpayers been relieved of payment, it would violate due process of law to tax taxpayers similarly situated.

Your appellant thus urges that the Court below so departed from the accepted course of judicial proceedings that review is necessary in this Court to determine the constitutional issues involved in accordance with the overwhelming precedent.

Your appellant further urges that the showing of an unconstitutional construction of the repealing act raises the well-established principle that where a statute is open to more than one construction, one of which would render it void or of doubtful validity, and the other is reasonable and in harmony with the constitution, then the one which sustains its validity will be adopted, *Miller v. Commonwealth*, 172 Va. 639, 2 S.E.2d 343; *In re Seizure of Seven Barrels of Wine*, 79 Fla. 2, 83 So. 627, 632. This rule, together with the arguments urged below, and which arguments are hereby re-urged, compels a construction of the statute which does not remit the delinquent taxes.

If such a construction is not to be found, then, in the alternative, and in the interests of justice to those who have voluntarily paid the taxes at a time the assessment was valid, the equities demand a test of the validity of the repeal upon constitutional grounds.

2. The amount involved, while not of enormous proportions in comparison to tax sums levied by larger political entities of the United States, is of truly magnified importance in an area less providently

blessed with taxable values than others, and is sorely needed to maintain the high standard of government the Territory has set for itself in preparing to accept the full responsibility of government from the Federal Government. The result of such a construction of the repeal not only hampers such ends but disproportionately shifts the burden of maintenance of government to those who have voluntarily paid the valid tax pursuant to law. The number of people involved comprises a large percentage of the permanent residents of the Territory of Alaska. Of these, 11,504 have paid in excess of \$400,000.00 in taxes, and over 8,689 delinquent taxpayers are held by the Court of Appeals for the Ninth Circuit to have been forgiven over \$1,290,000.00 in taxes.

Further, the question of the applicability of the due process and equal protection clauses of the Fourteenth Amendment to tax remissions and refunds, over and above the varying determinations of state courts under varying state constitutional provisions calling for uniformity or prohibiting extinguishment of state obligations, is of wide importance as well as of application. Settlement of the limitations, as to the power of the state legislature to remit accrued and delinquent taxes in the face of enormous and numerous payments by nondelinquent taxpayers, will guide future legislatures, not only of the Territory of Alaska but of all legislative bodies in the several states.

**CONCLUSION.**

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, Juneau, Alaska,  
February 21, 1958.

Respectfully submitted,

**J. GERALD WILLIAMS,**  
Attorney General of Alaska,

**DAVID J. PIER,**  
Assistant Attorney General,  
*Counsel for Petitioner,*  
*Territory of Alaska.*

(Appendices A, B and B(1) Follow.)





## **Appendix A**

### **CHAPTER 10, SESSION LAWS OF ALASKA, 1949.**

**Section 1. TITLE.** This Act may be cited as the "Alaska Property Tax Act".

**Section 2. DEFINITIONS.** As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" includes all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include", when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint

venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber or patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

**Section 3. LEVY OF TAX.** For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which

are not producing, and nonproducing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at \$500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such nonmining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

#### **Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS.**

The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city and town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection



authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder,



unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

**Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS.** The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or in-

corporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

#### **Section 6. EXEMPTIONS.**

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of \$200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption

exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemption shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) **INDUSTRIAL INCENTIVE CLAUSE:**  
The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings



for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said



decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

## Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where

the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

Section 8. **ADDITIONAL RETURNS.** The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice that person shall comply fully with its requirements within thirty days after its receipt by him.

Section 9. **POWER TO MAKE EXAMINATIONS.**

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

**Section 10. INSPECTION OF RETURN.** No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

**Section 11. VALUATION.** Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate

with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

**Section 12. ASSESSMENT.** Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

**Section 13. TO WHOM ASSESSED.**

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes



assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

#### Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

- (2) a description of all taxable property;
- (3) the assessed value, quantity, or amount of said property and the taxes thereon;
- (4) the arrears of taxes owing by any persons; and,
- (5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

## **Section 15. ASSESSMENT NOTICE.**

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equalization purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

**Section 16. COMPLETION OF ASSESSMENT ROLL.** The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplement assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

**Section 17. EFFECT OF ASSESSMENT ROLL.** All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessments entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

**Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS.** All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act relating to assessment rolls shall, so far as applicable, apply to supplementary assessment rolls.

**Section 19. CORRECTION OF ERRORS BY ASSESSOR.** Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

**Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.**

(a) A copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assessment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.



**Section 21: VALIDITY OF ASSESSMENT ROLLS.** Every assessment roll as completed and certified by the assessor, and as corrected and amended by him from time to time in conformity with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

**Section 22. DEPOSIT OF ROLL WITH COLLECTOR.** Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

**Section 23. SITTINGS AND RECORDS OF BOARD.** For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment rolls, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

## **Section 24. NOTICES BY BOARD.**

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

## **Section 25. APPEAL BY PERSON ASSESSED.**

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease,

unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

**Section 26. APPEAL RECORD.** Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

**Section 27. NOTICE OF HEARING.** Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

**Section 28. HEARING OF APPEAL.**

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

**Section 29. ENTRY OF DECISIONS.** The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

**Section 30. COLLECTION UNAFFECTED BY APPEAL.** Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

**Section 31. APPEAL TO COURT.** Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal



shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promulgate uniform regulations adapting the above referenced procedure for perfecting such appeals.

**Section 32. TIME OF PAYMENT.** Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

**Section 33. MODE OF PAYMENT.** All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

**Section 34. LIEN.**

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

**Section 35. INTEREST.**

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

**Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT.** Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder—

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

### Section 37. FALSE RETURNS AND RECORDS.

Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudulently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

### Section 38. DEFACING POSTED NOTICES.

Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than

One Hundred Dollars and not more than One Thousand Dollars.

**Section 40. LIABILITY OF CORPORATE OFFICERS, ETC.** Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any act, default, or refusal which would subject the organization to criminal liability hereunder, shall be likewise personally guilty of such offense.

**Section 41. PROSECUTIONS.** Prosecutions hereunder for imposing of fines shall be at the instance of the Tax Commissioner and be brought in the name of the Territory.

**Section 42. RECOVERY OF UNPAID LIENS.** On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.



### **Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.**

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that persons appointed may perform the duties of their offices until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be \$15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:—

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

**Section 44. TAX COMMISSIONER.** The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall

administer all provisions of this Act except those specifically assigned to a Board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

**Section 45. SEVERABILITY CLAUSE.** If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

**Section 46. EMERGENCY CLAUSE.** An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.



# Appendix B

## United States Court of Appeals for the Ninth Circuit

**TERRITORY OF ALASKA,**

*Appellant,*

**vs.**

**AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,**

**No. 15,070**

**June 27, 1957**

*Appellees.*

**Appeal from the District Court for the  
District of Alaska**

**Division Number One**

**Before HEALY, LEMMON, and FEE, Circuit  
Judges.**

**LEMMON, Circuit Judge.**

In the face of the Alaska Legislature's mandate in 1953 that the Territory's Property Tax Act of 1949 "is hereby repealed," with certain specific and limited exceptions embodied in a special saving clause clearly

not applicable here, the appellant insists that it can still "collect accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952."

It is urged that this saving clause merely bestowed an "important additional right in the form of a pecuniary advantage [to] municipalities, schools and public utilities . . . but denied to the Territorial Government"; but that this "alleged special savings [sic] clause" should not protect the appellees from being held "personally liable for the unpaid taxes" for the earlier years.

In this connection, we may observe in passing that both parties repeatedly refer in their briefs to "savings" clauses—the appellant 44 times and the appellees 58 times. This palpable error, in which the Court below joined, and which, because of its frequency, can scarcely be regarded as typographical, occasionally is encountered even in some legal encyclopedias. For example, in 50 Am. Jur., Statutes, § 528, page 535, under the caption "*Express Savings Provisions in Repealing Statutes*," we find the form "savings" and the form "saving" each used three times in the same paragraph, each time followed by the word "clause."

Since we are here dealing with statutory construction and not with bank accounts, "saving" is, of course, the precise word. See *South Carolina v. Gailard*, 1880, 101 U.S. 433, 438; *Hedges v. United States*, 1953, 346 U.S. 209, 227, note 25; *Bouvier*, Third Revision, 1914, volume 2, page 3007; 82 C.J.S. Statutes § 440, pages 1014-1018; *Webster's New Inter-*

national Dictionary, Second Edition, Unabridged, 1955, page 2223, *sub verbis* "saving clause."

In his argument supporting the finespun thesis that the appellees owe these back taxes in the face of a plain and—as to them—unqualified repeal, able counsel for the appellant displays more agility than persuasiveness.

### 1. *Statement of the case.*

On February 21, 1949, the Territorial Legislature of Alaska enacted the first general "Property Tax Act" of the Territory, Chapter 10, Session Laws of Alaska, 1949, hereinafter sometimes referred to as Chapter 10. On March 12, 1953, the Property Tax Act was repealed by Chapter 22, Session Laws of Alaska, 1953, pages 73-74, which was passed over Governor Ernest Gruening's veto. Because of the crucial relevance of that repealing statute to the present lawsuit, we copy it below in full:

"To repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; *excepting from repeal certain taxes and tax exemptions*; and declaring an emergency.

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

"Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval." [Emphasis supplied.]

It may here be explained that Section 6(h) of Chapter 10, *supra*, refers to "incentive exemptions" that the Tax Commissioner of Alaska was authorized to grant to "new industries," and is not relevant to the present controversy.

Between April and May of 1955, the appellant filed eight separate complaints against the appellees seeking to recover a total of more than \$175,000 in taxes, interest and penalties for various years between 1949 and 1952, inclusive. The appellees point out that these suits "were all personal actions against the several [appellees] seeking to recover taxes on both real and personal property combined without any attempt at segregation of one type of property from the other."



Each appellee filed a separate and identical motion to dismiss, alleging that the complaint did not state a claim upon which relief could be granted, and that the action was not brought within the time required by law.

On May 5, 1955, the appellant filed a counter motion to strike against four of the appellees, requesting the Court below to strike the motion to dismiss. The Court denied the motion to strike and granted the appellees' motion to dismiss the eight complaints, for the reasons stated in the Court's opinion, which was filed on January 4, 1956. 137 F. Supp. 181.

On February 7, 1956, the appellant filed a notice of appeal from the order of the Court below dismissing the complaints. On November 14, 1956, we ordered that the appeal "be dismissed for want of jurisdiction because of the lack of final judgment," and we remanded the cases to the Court below.

On December 11, 1956, the District Court filed a final judgment decreeing (1) that the complaints alleging a personal liability be dismissed; (2) that the complaints and the "numbered causes be dismissed on the merits for the reasons stated in the Court's opinion of January 4, 1956," *supra*; and (3) that neither the taxes nor the remedy under Chapter 10 "survived the repeal found in Chapter 22 SLA 1953," etc.

On the same day, a second notice of appeal was filed in this case. It is this second appeal that is now before us.

Four questions are presented by the appellant:

(1) Whether the Property Tax Act is a tax on the appellees for which they are personally liable, or is merely a tax upon their property;

(2) Whether the appellant is without a remedy to collect and enforce taxes due under the Property Tax Act;

(3) Whether the language in Chapter 22, *supra*, repealing the Property Tax Act, is a "special saving clause" nullifying the appellant's right under the "Territorial General Saving Clause," *infra*, "to collect accrued and unpaid taxes for" 1949-1952.

(4) Whether, in interpreting Chapter 22, *supra*, the terms and expression of which are asserted to be ambiguous, "the Court is limited in ascertaining the legislative intent to only those statutory constructional aids of which it may take 'judicial notice' or whether it may refer to extrinsic aids, otherwise admissible under the laws of evidence, which bear directly on such intent."

In our view, Question No. 3 is determinative of the issue.

## 2. *Alaska's General Saving Statute*

Section 19-1-1, Alaska Compiled Laws Annotated, 1949, as amended by Chapter 4, Extraordinary Session Laws of Alaska, 1955, reads as follows:

*"Effect of repeals or amendments.* The repeal or amendment of any statute shall not affect an offense committed or any act done or right accruing or accrued or any action or proceeding

had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."

### 3. *The Saving Section of the Repealing Act Overrides the General Saving Statute.*

Section 2 of the Act of 1953, hereinafter the repealing act, must prevail over Section 19-1-1 of Alaska Compiled Statutes Annotated, hereinafter the general saving statute.

At the outset, we note that the very title of the repealing act underlines one of its main purposes; namely, that of "*excepting from repeal certain taxes and tax exemptions.*"

In *John J. Sesnon Co. v. United States*, 9 Cir., 1910, 182 F. 573, 576, certiorari denied, 1911, 220 U.S. 609, a case that came to this Court from Alaska, Judge Morrow observed:

"Where doubt exists as to the meaning of the statute, the title may be looked to for aid in its construction."

In the repealing statute before us, the participial phrase, "*excepting* from repeal" certain taxes, etc., without any qualification to the word "*excepting*," indicates that the term is to be taken in its ordinary restrictive sense.

Considering the repealing act as a whole, we should bear in mind that being a *special* or, in the words of the Supreme Court, a "*specific*" enactment, it qualifies and furnishes exceptions to the *general* repeal law of Alaska—Section 19-1-1, dealing with the "Effect of repeals or amendments," *supra*.

More than threescore and ten years ago, this rule was already "well settled" in Anglo-American law.

In *Townsend v. Little*, 1883, 109 U.S. 504, 512, the Court observed:

"According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to priority of enactment, may subsist together, *the specific qualifying and supplying exceptions to the general*, this provision for the execution of a *particular* class of deeds is *not* controlled by the law of the territory requiring deeds *generally* to be executed with two witnesses. [American and English authorities cited.]" [Emphasis supplied.]

The principle is merely a corollary of the familiar maxim, *Expressio unius est exclusio alterius*, as was pointed out in *Rybolt v. Jarrett*, 4 Cir., 1940, 112 F.2d 642, 645:

"There is some force here in the maxim *Expressio unius est exclusio alterius*. When in a



statute of such clean cut restrictive force, the legislature undertook to make certain explicit exceptions, it seems a fair implication that the legislature intended to exclude other exceptions, and thus to make the statute say what it means and mean what it says."

Similarly, in *Jones v. H.D. & J.K. Crosswell*, 4 Cir., 1932, 60 F.2d 827, 828, it was said:

"Being exceptions carved out of the general rule, intangible property not *specifically* mentioned as being tangible property must be excluded. The maxim '*expressio unius est exclusio alterius*' applies. *It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed.* [Many cases cited]" [Emphasis supplied.]

The principle is well established in California. In *Los Angeles Brewing Company v. City of Los Angeles*, 1935, 8 C.A. 2d, 391, 398, cited in the *Stanford Law Review* of January, 1949, Volume 1, Number 2, Page 371, Note 2, the Court remarked:

"As section 22 of Article XX [of the Constitution of California] *was adopted last, as it is special in dealing with this subject of the control, licensing and regulating of 'the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquor within the state'* and as it shows an intention to remove the licensing for revenue of those so dealing in intoxicating liquors from the realm of a municipal affair to that of a matter of general state-wide concern, its provisions must be held to control over those of section 6 of article XI of the Constitution

[authorizing cities and towns to legislate "in respect to municipal affairs"] and vest in the state the exclusive and sole right to license for the purpose of revenue those engaged in the business of manufacturing, dealing in or handling intoxicating liquors." [Emphasis supplied.]

So far we have looked at the authorities dealing with the *general* application of the principle of "The expression of one is the exclusion of others." But there is a leading and oft-quoted decision that applies the venerable maxim to the precise question that we are here considering; namely, the conflict between a *general* repeal provision and a *special* repeal provision.

We refer to *State v. Showers*, 1885, 34 Kan. 269, 8 P. 474, 476-477, where the entire question was lucidly discussed:

"The offense of which the defendant was found guilty was committed in violation of section 7 of the prohibitory liquor law as enacted in 1881, and the prosecution for such offense was commenced and conducted to its final termination after said section had been amended and the original section repealed by an act taking effect March 10, 1885; and the first question presented to this court, . . . is whether the defendant could be punished for a violation of the old section when the prosecution had not been commenced until after it had been amended and repealed."  
[Page 475]

The general saving statute of Kansas at that time read in part as follows:

"The repeal of a statute does not revive a statute previously repealed, nor does such repeal effect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the statute repealed." (Compiled Laws, 1879, c. 104, § 1)

It will be observed that the above Kansas statute was closely similar in effect to the General Saving Act of Alaska, § 19-1-1, *supra*. On the other hand, § 19 of the repealing act of 1885, *supra*, contained the following special saving proviso:

"All prosecutions pending at the time of the taking effect of this act shall be continued the same as if this act had not been passed."

With this legislative and factual situation before it, the Supreme Court of Kansas said:

"The question as to what should be repealed and what saved was before the legislature. They had the entire subject-matter thereof under consideration, and evidently intended to cover the entire ground; and evidently intended that nothing should be repealed except what they expressly repealed, and that nothing should be saved except what they expressly stated should be saved. They expressly saved some things; therefore it must be inferred that they intended to save no others. *Expressio unius est exclusio alterius*. The legislature evidently intended that the special saving clause which they enacted in section 19 of the Act of 1885 should take the place of all others, so far as prosecutions under original section 7 were concerned; and that in cases where the special saving clause could apply the general



*saving statute should have no operation.* 'It is a well-settled rule of construction that specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which might otherwise be broad enough to include it.' *Felt v. Felt*, 19 Wis. 196. 'It is familiar law that a later statute will operate as a repeal of a former, although it contains no express repeal, and even though its provisions are not absolutely repugnant to those of the former, whenever it is obvious that the one was intended as a substitute for the other.' [Cases cited.]

"If, however, the saving clause in section 19 of the act of 1885, was not intended by the legislature to cover the entire ground, and to be a substitute for the general saving statute so far as cases like this are concerned, then the saving clause contained in section 19 of the Act of 1885 has no office to perform, but is absolutely worthless, for the general saving clause would save all that it saves and very much more. Such an interpretation of the law as this would violate all proper canons of construction. It would in effect say that the legislature had done the very foolish thing of enacting a saving clause which can have no real operation at all, and can subserve no actual purpose whatever. 'It is a well-settled rule that when any statute is revised, or one act framed from another, some parts being omitted, the parts omitted are not to be revived by construction, but are to be considered as annulled. To hold otherwise would be to impute to the legislature gross carelessness or ignorance, which is altogether inadmissible.' *Ellis v. Paige*, 18 Mass. 45." [Emphasis supplied.]



Emphasizing that the *general* saving statute comes into play only where the repealing act is "silent as to whether the rights and remedies" under the old law are to be saved, the Supreme Court of Kansas said in conclusion:

"The theory upon which it has been held by this court that the general saving statute is applicable in cases of repeals is that where the repealing statute is *silent* as to whether the rights and remedies which had previously accrued under the repealed statute should be saved or not, such silence indicates an intention on the part of the legislature that the general saving statute should be left to operate upon the repeal, and to save all such rights and remedies as come within the saving provisions of the general saving statute. [Cases cited.] In the present case, however, the repealing statute is not *silent*, for it itself contains a saving clause which shows that it was not the intention of the legislature to rely upon the general saving statute.

"For the reasons above stated we think the present action cannot be maintained. The judgment of the court below will therefore be reversed and cause remanded for further proceedings.

"(All the justices concurring.)" [Pages 477-478]<sup>1</sup>

<sup>1</sup>See also, on this question of the legislators' intention "that nothing should be saved except what they expressly stated should be saved", *Wilmington Trust Co. v. United States*, Del., 1928, 28 F.2d 205, 208; and on the general application of the "*expressio unius*" maxim, see also *Ainsworth v. Bryant*, 1949, 34 C.2d 465, 472, 473, 211 P.2d 564, 568; 50 Am. Jur. §528, page 535; 82 C.J.S. §440(a); page 1015.

Both on reason and authority, therefore, we hold that § 2 of Chapter 22 of 1953, the repealing statute, means precisely what it says; namely, that Chapter 10 of the Session Laws of Alaska, 1949, shall "be and it is hereby repealed," except "any taxes which have been levied and assessed by any municipality, school or public utility district," etc., including such taxes levied and assessed for the "current fiscal year"—taxes which are not in controversy here, and which alone are saved from repeal.

With the above exclusive exception, Chapter 10, Session Laws of Alaska, 1949, is no longer of any force or effect—as to past, present, or future years.

*4. The District Court Did Not Err in Excluding from Evidence H. B. No. 3 and S. B. No. 5.*

The appellant asserts that "Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953".

Specifically, the appellant urges as error the lower court's rejection of "both the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature".

The record shows that only House Bill No. 3 was offered in evidence. The appellant counters with the statements that Senate Bill No. 5 "was identical in all respects to House Bill No. 3"; that an authenticated copy was formally filed in the District Court

with the Territory's brief; and, "alternatively", that the Senate bill "could have been called to the Court's attention by citing page 32 of the 1949 Senate Journal (which is conceded by the appellees to be subject to judicial notice) wherein the word-for-word likeness of the *title* of Senate Bill No. 5 and House Bill No. 3 clearly indicates both bills to be indistinguishable in form, design or purpose".

We accept the appellant's "alternative" point at its face value, and hold that the title of the Senate bill and the House bill indicate that they are "indistinguishable". By a parity of reasoning, however, we also hold that the title of House Bill No. 3 as introduced and the title of the House bill as enacted "clearly indicate" their differences.

As originally introduced, the bill, according to its title, was offered for the purpose of "abrogating and repealing all accrued and unpaid taxes levied thereunder"; while the Act as passed carried a title showing that the new statute was "excepting from repeal certain taxes and tax exemptions". The extract from the Senate Journal printed in the appendix to the appellant's opening brief in this Court also shows that a "new Section 2" dealing with taxes levied "by any municipality, school or public utility district", etc., *supra*, was added by the Senate, and was concurred in by the House.

These changes in the House bill before its final enactment, however, are not relevant here.

In *Trailmobile Co. v. Whirls*, 1947, 331 U.S. 40, 60-61, the Supreme Court thus disposed of attempts

to interpret statutes by minutely tracing "legislative maneuvers":

"These reasons, founded in the literal construction of the statute and the policy clearly evident on its face, are sufficient for disposition of the case. They are not weakened by the Government's strained and unconvincing citation of the Act's legislative history.

"That argument is grounded in conclusions drawn from changes made without explanation in committee [as in the statute before us] with respect to various provisions finally taking form in §8, changes affecting bills which eventually became the Selective Training Service Act and the National Guard Act, 54 Stat. 858. Apart from the inconclusive character of the history, the Government's contention assumes that the only alternatives presented by the final form of the bill were indefinite duration for the incidents of the employment named and none at all. This ignores the other possibilities considered in this opinion, including duration for a reasonable time. Moreover, as has been noted, *the most important committee changes relied upon were made without explanation. The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers.*" [Emphasis supplied.]

We hold that the trial court did not commit prejudicial error in excluding evidence of the original House Bill No. 3 and the amendments thereto.

From the foregoing, it will be seen that, since the limited saving clause did not preserve enough of the repealed tax statutes to be applicable against the tax-



payers who are the appellants here, they are not liable either *in rem* or *in personam*. Any discussion, therefore, of the *personal* liability of the appellants, as contradistinguished from the *in rem* liability of their property, would be moot.

In our view, the appellants are not liable either *in rem* or *in personam*, since the repealing act, as has been shown, completely wiped out *any* tax liability except as to municipal, school, or public utility district taxes, which are concededly not involved in the instant case.

### 5. Conclusion

Accordingly, it is the holding of this Court that the saving section of the repealing act relating to the Alaska Property Tax Law overrides the general saving statute; and that the Court below did not err in excluding from evidence House Bill No. 3 and Senate Bill No. 5.

The judgment of the District Court is therefore  
*Affirmed.*

### HEALY, Circuit Judge, Dissenting

I disagree with the holding of the majority that section 2(a) of chapter 22, Alaska Session Laws of 1953, nullifies the effect here of the Alaska General Savings Statute; section 19-1-1, Alaska Compiled Laws 1949. The relevant provisions of the latter are quoted below.<sup>1</sup> It is not at all clear that it was the

<sup>1</sup>*Effect of repeals or amendments.* The repeal or amendment of any statute shall not affect an offense committed or any act done

legislative intent to wipe out the liability of those in the situation of appellees for unpaid taxes levied for the years 1949 through 1952, but rather that section 2(a) had another and different purpose.

Significantly, the history of the 1953 legislation shows that section 2 of the original bill was deleted in the course of the bill's consideration. That section in unmistakable terms had forgiven and abrogated all pre-1953 taxes. Concurrently, the phrase "and abrogating and repealing all accrued and unpaid taxes levied thereunder" was deleted from the bill's title. Thus the legislature had before it in the original bill clear language which would have forgiven the taxes here in question. It chose, instead, to reject the language.

In material part section 2(a) of the Act as finally passed reads:

"Section 2. Section 1 of this Act shall not be applicable to: (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; . . ."

---

or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. . . ."

In light of what has been said above, the section is fairly construable as intending no more than a grant to the municipalities and school and public utility districts—but not to the Territory itself—of the right to levy and collect taxes for the then current year, namely 1953, both before and after the repealing act had taken effect. There was a logical reason for granting this right to these local districts in that the legislature may well have felt it undesirable to interfere with their current fiscal programs, whether or not the levies for that year had yet been made. As so construed, section 2(a) is readable in pari materia with the General Savings Statute, above quoted, as not interfering with the collection of unpaid 1949-1952 taxes, either of the Territory or of the taxing districts.

As was recognized by the trial judge but is not mentioned in the majority opinion here, it is a fundamental rule of statutory construction that general savings clauses or statutes preserve rights and liabilities which have accrued under an act repealed, and that they operate to make applicable in designated situations the law as it existed before the repeal, *unless such application is negatived by the express terms or clear implication of a particular repealing act.*

My brothers, as I understand them, do not contend that such application is negatived by the express terms of the 1953 legislation, but rather is to be gathered by implication. To me, however, the legislation in the respects here in question is fundamentally ambiguous, both in its meaning and in the motives

inspiring its enactment. Accordingly I dissent from the majority holding.

(Endorsed:) Opinion. Filed June 27, 1957.

Paul P. O'Brien, Clerk.



**Appendix B(1)****United States Court of Appeals  
for the Ninth Circuit****No. 15,070****TERRITORY OF ALASKA,****vs.*****Appellant,*****AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,*****Appellees.*****JUDGMENT**

**Appeal from the District Court for the District of  
Alaska, Division Number One.**

**This cause came on to be heard from the District  
Court for the District of Alaska, Division Number  
One, and was duly submitted.**

**On consideration whereof, it is now here ordered  
and adjudged by this Court, that the Order of the**

said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and entered: June 27, 1957

Paul P. O'Brien, Clerk.

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Office Supreme Court, U.S.

**FILED**

**AUG 25 1958**

**JAMES R. BROWNING, Clerk**

**BRIEF ON MERITS**

# **In the Supreme Court**

**OF THE**

## **United States**

**OCTOBER TERM, 1958**

**No. 40**

**TERRITORY OF ALASKA,**

*Petitioner,*

**VS.**

**AMERICAN CAN COMPANY, FIDALGO ISLAND  
PACKING COMPANY, LIBBY, McNEILL &  
LIBBY, INC., NAKAT PACKING COMPANY,  
NEW ENGLAND FISH CO., P. E. HARRIS  
COMPANY, INC., PACIFIC & ARCTIC RAIL-  
WAY & NAVIGATION CO., and OCEANIC  
FISHERIES CO.,**

*Respondents.*

**On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit.**

### **BRIEF FOR THE PETITIONER**

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# **In the Supreme Court**

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**AMERICAN CAN COMPANY, FIDALGO ISLAND  
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*Respondents.*

**On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit.**

**BRIEF FOR THE PETITIONER.**

**OPINIONS BELOW.**

The opinion of the Court of Appeals (R 77-89) is reported at 246 F. 2d 493.

The opinion of the District Court (R 56-67) is reported at 137 F. Supp. 181.

### **JURISDICTION.**

The judgment of the Court of Appeals was entered on June 27, 1957 (R 91-92). A timely petition for rehearing filed on July 25, 1957 (R 92-94) was denied on December 4, 1957 (R 94). The jurisdiction of this Court rests on 28 U.S.C., Section 1254(1).

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### **QUESTIONS PRESENTED.**

The United States Court of Appeals for the Ninth Circuit has construed Chapter 22, Session Laws of Alaska, 1953, which repealed the Alaska Property Tax Act, as forgiving the liability of delinquent taxpayers for taxes accruing under that Act.

1. Whether the special saving clause, if the Court below is correct in construing it as exempting delinquent taxpayers from liability, is valid under the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Section 9 of Alaska's Organic Act, 48 U.S.C. 78; § 48-1-1, ACLA 1949.

2. Whether the Court below correctly interpreted Section 2 of Chapter 22, Session Laws of Alaska, 1953, as a special saving clause which overrides the General Saving Statute of Alaska, Section 19-1-1, Alaska Compiled Laws Annotated, 1949.

3. Whether the District Court was correct in excluding evidence of the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature.

**STATUTES INVOLVED.**

The statutory provisions involved are the following:

U. S. Const. amend. V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. Const. amend XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

48 U.S.C. Sec. 23, Sec. 2-1-1, ACLA 1949:

"Constitution and laws of the United States extended: Continuation of existing laws. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All



the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

**48 U.S.C. Sec. 78, Sec. 48-1-1, ACLA 1949:**

"Requirement of uniform taxes: Assessments. All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof."

**Section 19-1-1, ACLA 1949:**

"Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released, or

extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made."

Chapter 10, Session Laws of Alaska 1949, the Alaska Property Tax Act, appears in the Appendix, *infra*, pp. 1-29.

Chapter 22, Session Laws of Alaska, 1953:

"An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

"Section 2. Section 1 of this Act shall not be applicable to:

- (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and
- (b) any exemptions from the taxes referred to in subsection (a) of this section, which have

been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

"Section 3. An emergency<sup>5</sup> is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."

#### STATEMENT.

1. In 1949, the Alaska Territorial Legislature enacted the first general property tax act of the Territory, which was Chapter 10, Session Laws of Alaska, 1949. The validity of the Act was challenged in extensive litigation, with the Act being finally upheld as constitutional.

During the pendency of these litigations, more than 8,689 taxpayers, among whom the appellees are numbered, became delinquent in excess of \$1,290,000.00, while at the same time, 11,504 people voluntarily paid their taxes in excess of \$400,000.00.

2. In 1953, the subject tax statute was repealed by Chapter 22, Session Laws of Alaska, 1953.

3. Between April and May of 1955, the appellant filed eight separate Complaints, seeking to recover a total amount of over One Hundred Seventy-five Thousand Dollars (\$175,000.00) in taxes, interests and penalties which had accrued and were due and owing by the appellees for the years 1949, 1950, 1951 and 1952. (R 3, 8, 14, 19, 25, 29, 33 and 37.)

4. On either the last day or the day before the last day within which to answer appellant's Complaints, each appellee filed a separate, identical Motion to Dismiss, alleging:

"(1) That the Complaint does not state a claim against the defendant upon which relief can be granted.

"(2) That the action was not brought within the time required by law." (R 6, 11, 17, 22, 28, 32, 36 and 40.)

5. On May 5, 1955, the appellant filed a counter motion against four of the appellees requesting that the United States District Judge enter an order (1) striking the Motions to Dismiss filed by the defendants, and (2) requiring the defendants to answer the complaint within ten days thereafter. Appellant listed the following reasons for its motion:

1. That defendants' Motions to Dismiss fail to state the grounds therefor with particularity as is required by Rule 7(b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the Motion to Dismiss is a dilatory proceeding. (R 7, 12, 18 and 23.)

At the hearing on appellant's Motion to Strike, the second ground was abandoned in view of *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated, Limited*, 185 F. 2d 196, 202 (9th Cir.). (R 41)



Appellees' principal argument in answer to appellant's contention that Rule 7(b) had not been complied with was that their Motion to Dismiss conformed to Form 19 of the Appendix Forms to the Federal Rules of Civil Procedure and was therefore stated with sufficient particularity. The late Honorable George W. Folta sustained appellees' argument and denied appellant's Motion to Strike.

6. The appellees' Motions to Dismiss were consolidated for hearing (R 25, 44), and the Court convened on October 28, 1955 and heard arguments thereon (R 46).

7. On January 21, 1956, the District Court granted appellees' Motion to Dismiss the Complaint (R 69) for the reasons stated in its opinion (R 56-67).

8. On February 7, 1956, appellant filed Notice of Appeal from the Order of Dismissal to the United States Court of Appeals for the Ninth Circuit, and also its Statement of Points upon which appellant intended to rely (R 70-73).

9. On June 27, 1957, the decision of the District Court was affirmed by the United States Court of Appeals for the Ninth Circuit by a divided Court (R 77-91). The majority stated that four questions were presented by the appellant (R 80) and that the third question determined the issue. That question was whether the language in Section 2 of Chapter 22, Session Laws of Alaska 1953, which repealed the 1949 property tax act, constituted a special saving clause which nullified the Alaska General Saving Statute, which is Section 19-1-1 Alaskan Compiled Laws Anno-

tated, 1949. The majority held such was the case and that no liability against the appellees survived the repeal. It was also held that the District Court was correct in excluding from evidence House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature, on the basis of *Trailmobile Company v. Whirls*, 1947, 331 U.S. 40, 60-61. (R 89.) The Court did not decide questions number one and number two (R 82) because they stated that the foregoing answers were determinative of the issue. Judge Healy, in dissenting (R 91), argued that the excluded Bills were material to show legislative intent and, further, that the special saving clause and the Alaska General Saving Statute could be read in *pari materia*. Judge Healy also pointed out that the application of a general saving clause must be negatived by the *express* terms or *clear* implication of a particular repealing act.

10. The appellant, the Territory of Alaska, filed a timely petition for rehearing on July 25, 1957 (R 92) which was denied on December 4, 1957 (R 94). In this petition, which has been certified as a portion of the record and filed in this Court, your appellant injected the issue of constitutionality which of necessity arose from the holding of the majority of the Court below. The present posture of the case indicates that, as the Court of Appeals has now interpreted the repealing act, it is unconstitutional, since it violates the Organic Act of the Territory of Alaska and the Fifth and Fourteenth Amendments of the United States Constitution.

### SUMMARY OF ARGUMENT.

Where under a valid tax statute taxes from some have been collected, the Legislature cannot constitutionally discriminate against, and deny the equal protection of the laws to, the taxpayers who have paid by remitting by repeal the liability of those who have not paid. Such action would violate the historic requirement of equality of taxation.

To apply the rules of statutory construction, an ambiguity must exist as here. In such case the ambiguity must be resolved in favor of a constitutional construction as against a construction of doubtful validity, in favor of a fair and equitable result, against tax forgiveness by implication, and against permitting a special saving clause to override a general saving clause unless by express terms or clear implication.

When an ambiguity exists as to the construction of a statute, the Courts can ignore no avenue of information. Where a bill is introduced with a section which provides for positive action and the Legislature deletes the section and later substitutes another section providing a different action, the original bill and original section may be admitted into evidence. The fact that the rejection and substitution were done without legislative comment goes only to the weight of the evidence and not to its admissibility.

## ARGUMENT.

### I.

THE CONSTRUCTION OF THE REPEAL FOUND IN CHAPTER 22, SLA 1949, MAKES THE STATUTE UNCONSTITUTIONAL SINCE SUCH A RESULT REMITS THE TAXES OF THOSE WHO ARE DELINQUENT TO THE DETRIMENT OF THOSE WHO HAVE PAID THEIR TAXES. THE TAX BURDEN IS UNEQUAL AND VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND RUNS ADVERSE TO SECTION 9 OF THE ORGANIC ACT OF THE TERRITORY OF ALASKA, 48 U.S.C. 78, § 48-1-1, ACLA 1949.

At the onset, leaving aside for the time being the Territory of Alaska's attack on the construction placed on Chapter 22 by the Court below, Petitioner feels that the underlying malignancy of Chapter 22 as so construed should be presented to the Court. By reviewing the flat result of the preceding litigation, the problem can best be observed.

The District Court supported by the Court of Appeals has stated that where 11,504 people have paid over \$400,000.00 under a valid tax law<sup>1</sup> the Legislature of the Territory of Alaska not only has the power to, but did forgive over 8,689 delinquent taxpayers (whose situation is identical with those who paid) their justly owing taxes in excess of \$1,290,000.00. The only feature which distinguishes one group from the other is that the forgiven group was delinquent. The group who paid have no recourse, having voluntarily, under the valid law, come forth to pay their share of the tax burden.

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<sup>1</sup>*Hess v. Mullaney*, 91 F. Supp. 139, reversed in *Mullaney v. Hess*, 189 F.2d 417; *Hess v. Mullaney*, 102 F. Supp. 430, sustained in *Hess v. Mullaney*, 213 F.2d 635.



Petitioner contends that there is no reported case in the common law where such a decision can be fairly and indistinguishably said to stand as precedent for the aforestated result.

Such a construction makes the act unconstitutional notwithstanding that the statute in question is a repealing act which *forgives* the tax as to one class, rather than a taxing statute which *exempts* a particular class. The effect is the same and constitutional limitations, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly. *Macallen Co. v. Massachusetts*, 279 U.S. 620 (1929).

Your Petitioner earnestly agrees with the proposition expressed by the Supreme Court of Florida in *Simpson, County Tax Collector v. Warren*, 106 Fla. 688, 143 So. 602, 603:

"Where a statute which provides for the collection of a particular tax is valid, and taxes from some have been collected under it, the Legislature is without power to unconstitutionally discriminate against, and deny the equal protection of the laws to the class of taxpayers who have already paid such tax while the statute was in force, by arbitrarily remitting or wiping out by repeal of the statute or otherwise the liability of those who have by their delinquency evaded or postponed payment for the time being."

and, further, with that in *State v. Butts*, 111 Fla. 630, 149 So. 746, 755:

"It cannot well be denied that, when the proper tax officers have legally placed upon each individual his share of the public burden of taxation, the Legislature of the state has no right to lift it from him to the prejudice of other taxpayers, or to the detriment of the public credit, either in the form of an abatement before, or in the form of a gift after, collection, or by a return to the taxpayer unburden his forfeited property, for this being done, a deficiency results in the public revenues which must be supplied by the imposition of additional tax assessments and levies upon the nonfavored class, thereby violating the fundamental constitutional requirement of all taxation, which is that it shall bear equally upon all, with special privileges to none."

Similar views are found in the following:

*Sheppard, et al. v. Hidalgo County, et al.*, 125 Tex. 294, 83 S.W. 2d 649, 653;

*Lincoln Mtg. and Trust Co. v. Davis*, 76 Kan. 639, 92 P. 707;

*State ex rel. Coe v. Fyler*, 48 Conn. 145;

*State v. Armstrong*, 17 Utah 166, 53 P. 981.

In both *Richey v. Wells*, 123 Fla. 284, 166 So. 817, and *State, ex rel. Kain v. Fischl, County Treasurer*, 94 Mont. 92, 20 P. 2d 1057 (later overruled on different grounds), the respective courts declared that the selection and classifying of delinquent taxpayers as beneficiaries of special tax concessions without the same benefits being equivalently available to non-delinquent taxpayers violated the *Federal Constitution*.

More often remissions of taxes are denied under various *State* constitutional provisions such as requirements of uniform taxation and equal protection: *Huntington v. Worthen and Little Rock and Fort Smith Railway v. Worthen*, 120 U.S. 97 (1887); *Thompson v. Auditor General*, 261 Mich. 624, 247 N.W. 360; *Ranger Realty Co. v. Miller*, 102 Fla. 378, 136 So. 546; *State, ex rel. Matteson v. Luecke*, 194 Minn. 246, 260 N.W. 206; *State, ex rel. Hostetter v. Hunt*, 132 Ohio St. 568, 9 N.E. 2d 676; *St. Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738; *State, ex rel. Coe v. Fyler, supra*; *State v. Armstrong, supra*.

Generally, where the remission of accrued taxes is permitted, it is permitted because the remission is uniform upon all taxpayers, *Clements v. Peerless Woolen Mills*, 197 Ga. 296, 29 S.E. 2d 175, or that uncollectible or doubtful claims can be compromised, *Opinion of the Justices, No. 89*, 251 Ala. 96, 36 So. 2d 480, or that the classification is reasonable, *State, ex rel. Anderson v. Rayner*, 60 Idaho 706, 96 P. 2d 244; or that a remission of penalties and interest on delinquent taxes is permissible because the situation is distinguished from the case of remission of the tax itself, *State, ex rel. Sparling v. Hitsman*, 99 Mont. 521, 44 P. 2d 747, or because the goal sought was to return land which would bring less than the accumulated taxes and penalties at a forced sale to the tax rolls by permitting the sale of certificates at less than such value, and it was not shown that the taxpayer was favored in the sale of the certificates; *Ranger Realty Co. v. Miller, supra*, or that the non-

delinquent taxpayers are to receive credits for ad valorem special assessments paid by them but which are relieved as to delinquent taxpayers, *San Bernardino County v. Way*, 18 Cal. 2d 647, 117 P. 2d 354, and for other reasons distinguishable from the instant remission.

This Court, in *Illinois Central Railroad Co. v. Commonwealth of Kentucky*, 218 U.S. 551, 563 (1910), in denying that an assessment upon taxpayer violated the equal protection clause, stated:

"It does not satisfactorily appear that other railroad corporations were not assessed in the same way or at the same time, or, assuming that they were so assessed, that they were not liable to pay the taxes accordingly."

The clear implication was that, had other taxpayers been relieved of payment, it would violate due process of law to tax taxpayers similarly situated.

The interpretation of the Court below makes Chapter 22 an unconstitutional act. The act, as interpreted, now constitutes a denial of due process and of equal protection of the laws under the Fifth and Fourteenth Amendments to the Federal Constitution. It further violates a provision of the Organic Act of the Territory of Alaska, 48 U.S.C. 78; § 48-1-1, ACLA 1949. Section 9 of the Organic Act provides:

"All taxes shall be uniform on the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, . . ."



## II.

**THE RULES OF STATUTORY CONSTRUCTION MAY BE  
APPLIED WHEN AMBIGUITY EXISTS.**

Moving into the argument on the construction of Chapter 22 itself, Petitioner initiates its objection by four fundamental canons of construction.

- (1) When an act is susceptible of more than one construction, one of which is of doubtful validity, the Courts should adopt the valid interpretation.

The first is based upon the preceding argument dealing with the constitutionality of the repeal. There is raised the well-established principle that where a statute is open to more than one construction, one of which would render it void or of doubtful validity, and the other is reasonable and in harmony with the constitution, then the one which sustains its validity will be adopted, *Anniston Mfg. Co. v. Davis*, 301 U.S. 337 (1937); *Porter v. Investors Syndicate*, 286 U.S. 461 (1932); *Miller v. Commonwealth*, 172 Va. 639, 2 S.E. 2d 343; *In re Seven Barrels of Wine*, 79 Fla. 1, 83 So. 627, 632. This rule compels a construction of the statute which does not remit the delinquent taxes.

- (2) An unjust result is to be avoided in statutory construction.

The second is that a construction which creates an unfair and inequitable result should be avoided. *Knowlton v. Moore*, 178 U.S. 41, 77 (1900); *Lau Ow Bew v. United States*, 144 U.S. 47 (1892); 51 Am. Jur., Taxation, Sec. 315; 50 Am. Jur., Statutes, Secs. 368-371. Judge Healy pointed out in his dissenting opinion that "the legislation in the respects here in

question is fundamentally ambiguous, both in its meaning and in the motives inspiring its enactment." (R 91). In the majority opinion, this ambiguity was recognized in Section three (R 82-87) where it was found necessary to apply statutory construction aids. There can hardly be any doubt that Chapter 22, S.L.A. 1953, is a patently ambiguous statute and susceptible to at least two interpretations.

The rule of construction, that an ambiguous Statute should be construed to produce a fair and equitable result, is very clearly stated in 50 Am. Jur., Statutes, Section 370, as follows:

"In the construction of a statute, considerations of what causes injustice may have potent influence. It is not to be supposed that the framers of a statute contemplated a violation of rules of natural justice, and it should not be presumed to have been within the legislative intent to enact a law having an unjust result. To the contrary, it is to be presumed that the legislature intended the law not to work an injustice. Accordingly, it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the injustice which may follow one construction or the other may properly be considered, and the courts, to support their construction of a statute, frequently refer to the justice thereof, or to the injustice which would result from a different construction of the law . . . it is considered a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a just or fair interpretation thereof, or in favor of such an interpretation as would promote and effectuate

justice, and result in a fair application of the statute . . . Moreover, the fact that unjust results follow the literal application of the language of a statute justifies a search of the statute for further indications of legislative intent. On the ground that a technicality should not be permitted to override justice, the general intention of the legislature is generally held to control the strict letter of the statute where an adherence to the strict letter would lead to injustice . . ."

It can hardly be disputed that the construction of Chapter 22, S.L.A. 1953, given by the majority results in a miscarriage of justice. This injustice is perpetrated against law-abiding taxpayers who timely filed their tax returns and paid their taxes. It discriminates against these diligent law-abiding citizens in favor of those persons who failed or refused to pay their taxes in express violation of Chapter 10, SLA 1949.

It is appropriate to ask this question: Could the Territorial Legislature have intended to wipe out over \$1,000,000.00 of fixed tax liability while at the same time retaining over \$400,000.00 of known paid-in taxes from those taxpayers who complied with the law by paying their taxes fully and on time as required by Chapter 10? To ask such a question is to answer it.

It is inconceivable that the Legislature intended such an inequitable result. Viewing Chapter 22's enactment in light of the fact that House Bill No. 3 was amended by expressly deleting the clause which

would have clearly forgiven all back taxes, it is impossible to impute to the Legislature such an intent.

- (3) Tax remissions are strictly construed and founded upon clear language.

The third applicable rule of statutory construction is also based upon the obvious ambiguity recognized both in the majority (R 82) and dissenting opinions (R 91). It is noted that there is no language in Chapter 22 expressly forgiving the payment of these taxes. It is well-established that tax forgiveness, including exemptions and remissions, is not obtained by implication but must be predicated upon clear, unmistakable language. *Great Northern Railroad Co. v. Minnesota*, 216 U.S. 206, 221 (1910); *Minot v. Philadelphia, Wilmington and Baltimore Railroad Co.*, *William J. Clarke, et al.*, 18 Wall. 206 (1874); Cooley on Taxation, Vol. 2, 4th Ed., Sec. 672, p. 1403.

- (4) A special saving clause does not override a general saving statute in the absence of express terms or clear implication.

The fourth rule of statutory construction is that cited by Judge Healy in his dissenting opinion (R 89). After lucidly setting out the propriety of the construction pressed for by Petitioner and noting the ambiguity of the statute, Judge Healy sets out the rule that a general saving clause preserving rights prior to a repeal shall apply "... unless such application is negated by the express terms or clear implication of a particular repealing act." (R 91) *Hertz, Collector v. Woodman*, 218 U.S. 205 (1910); *Great Northern Railroad Co. v. United States*, 208 U.S. 452, 465 (1908).



The court of appeals stressed certain points in drawing the rope of logic to its frayed conclusion. First, the ambiguity of the subject repeal was acknowledged by citing *John J. Sesnon Co. v. United States*, 182 F 573, 576 (CCA 9th), certiorari denied, 220 U.S. 609 (1911), to the effect that:

"Where doubt exists as to the meaning of the statute the title may be looked to for aid in its construction." (R 82).

Second, in citing the instances of application of the rule of superiority of a special saving clause over a general saving statute, the Court quotes that part of the opinion of *State v. Showers*, 34 Kan. 269, 8 P. 474 which in turn quotes that part of *Felt v. Felt*, 19 Wis. 196, which reads as follows:

"It is familiar law that a later statute will operate as a repeal of a former, although it contains no express repeal, and even though its provisions are not absolutely repugnant to those of the former, *whenever it is obvious that the one was intended as a substitute for the other.*" (R 85). (Emphasis supplied).

At this point it is to be seen that the majority below has, twofold, predicated its reasoning first upon the fact that doubt exists as to the meaning of the special saving clause and second upon the rule that a general statute is overridden by a special where there is an *obvious* intent to substitute the latter for the former. Petitioner, if it may also be allowed the luxury of being obvious, advances the proposition that the doubtful is not that which is obvious. It is

hereby urged that the rule of the *Showers* case, *supra*, and its kindred, is inapplicable to the instant case by the reasoning disclosed in the majority opinion itself.

To the effect that the excerpt from the *Felt* case, *supra*, is no wayward selection from the case law of *Felt* and *Showers* as set out by the majority below, we find the following quotation by the Court from the *Showers* case, *supra*:

*"... that in cases where the special saving clause could apply the general saving statute should have no operation."* (R 85).

The emphasis of the foregoing excerpt was supplied by the majority below, but Petitioner would urge that the emphasis should be restricted as follows:

*"... that in cases where the special saving clause could apply the general saving statute should have no operation."*

Petitioner so restricts the emphasis because the "cases" where the special saving clause could and does apply are the prospective, future, and additional savings to municipalities, schools and public utility districts for taxes which had and would accrue during the then current fiscal year. The general saving statute applied to "cases" of territorial taxes due and owing by reason of accrual prior to the current fiscal year. It is the later case we are considering and so it is submitted that this is not an instance where the special saving clause "could apply" so as to deny the operation of the general saving statute.

The majority in further support once again cites *Showers*:

"If, however, the saving clause in section 19 of the act of 1885 was not intended by the legislature to cover the entire ground, and to be a substitute for the general saving statute so far as cases like this are concerned, then the saving clause contained in section 19 of the Act of 1885 has no office to perform, but is absolutely worthless, for the general saving clause would save all that it saves and very much more. Such an interpretation of the law as this would violate all proper canons of construction. It would in effect say that the legislature had done the very foolish thing of enacting a saving clause which can have no real operation at all, and can subserve no actual purpose whatever . . ."

The meaning of this is that the special saving clause is supreme if it covers the same ground as the general saving statute, since duplication is a foolishness not to be imputed to a legislature. However, your Petitioner has already indicated that the office of the special saving clause and the ground which it covers is different from the purposes of the general saving clause; one is prospective and one is retrospective.<sup>3</sup>

One final thought remains. That is that Chapter 22, SLA 1953, is not really a special saving clause at all as we ordinarily understand it. This was pointed out in *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 162 (1920).

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<sup>3</sup>See Judge Healy's dissent at the bottom of page 90 and the top of page 91 of the Record as to the reading of the two in *pari materia*.

"... The usual function of a saving clause is to preserve something from immediate interference, —not to create; ..."

And in 50 Am. Jur., Statutes § 527 in relation to general saving provisions, it is said that:

"... They operate to make applicable in the designated situations the law as it existed before the repeal, ..."

The very designation "saving clause" indicates a retrospective view. Only that which exists could be saved—that which is prospective is a creation. Thus it is the position of the Territory of Alaska that the "exception" found in Chapter 22, SLA 1953, is prospective, saving nothing that presently exists. The function of saving that which existed (i.e., accrued taxes) fell to the General Saving Statute, Section 19-1-1, ACLA 1949. (Appendix "L," p. 53).

### III.

**THE COURT WAS UNDER A DUTY TO MAKE USE OF ALL AVAILABLE INTERPRETATIONAL AIDS TO DETERMINE THE TRUE MEANING AND INTENT OF THE STATUTE.**

The District Court examined the "history" of the passage of House Bill No. 3, which eventually became Chapter 22, by examining the House Journal of which it could take "judicial notice" (R 65). It is Petitioner's position that once having determined and established that an ambiguity existed, the District Court was then under a duty to make use of all available interpretational aids to ascertain the true



meaning and intent of the statute. Mere reference to the Territorial House Journal would not disclose the *full* history of the Act because of the very limited data contained therein.

Because of the particular circumstances existing in Alaska, the District Court should have considered any and all extrinsic aids which would help ascertain and establish the true legislative intent in passing Chapter 22, Session Laws of Alaska 1953, and should not have limited itself to only those matters of which it could take judicial notice.

Neither the Alaska Senate nor House Journals, maintained by the Legislature, can in any way be likened to the Congressional Record. This latter government-printed publication contains a verbatim and chronological entry of almost every proceeding in both Houses of the United States Congress, together with reports, comments, and other expressions of view declared openly or in writing by law-makers or committee members on the various bills being considered. Even recommendations and messages from persons in the judicial and executive branches of the Government are often included therein. Therefore, when a Court takes judicial notice of the Congressional Record, it is looking to a wealth of significant and pertinent data which promises to lend material aid in finding the true intent of the Congress in passing a particular statute.

Contrasted with the Congressional Record, the Alaska House and Senate Journals are almost void of helpful information. The Court's attention is

called to the history of House Bill No. 3 as it appears in the House Journal. (Appendices "B"-"K," pp. 30 and 52). No reason, apparent or otherwise, appears at any time for any course of action taken by either House of the Legislature. Recommendations by different committees are made without any discernible basis. No debates or arguments are recorded. The testimony of witnesses is unknown. The Journals simply record the title of a bill and a brief summary of the legislative action taken thereafter. No section or provision of law is ordinarily printed therein. At no time is the original measure or bill printed therein.

When a Court or jury is seeking to ascertain the existence or nonexistence of a fact, they are not restricted only to matters of which the Court may take "judicial note." In Volume 2, Sutherland's Statutory Construction, 3d Edition, 320, 321, Section 4505, the late Professor Sutherland admonished the Courts with these words of caution:

"The preceding criticisms of present techniques in interpretations do not mean that the interpretive process can or should be left exclusively to intuition. The dangers of usurping the legislative function in the guise of interpretation are all too apparent. The criticisms merely insist that the formalisms of the present rules founded upon nineteenth century fallacies concerning meaning and language may effectively cloak judicial usurpation of legislative power. The substance of the criticism is this: independent judicial determination arrived at exclusively from the reading of the words in the statute does not insure accurate interpretation and thus for the court

to assert that the statute is clear and unambiguous is merely to assert that the statute as read by the court produces a result which is satisfactory to the court. It does not necessarily mean that as read it reflects the legislative intent."

It is fitting to initially examine the effect of the self-limitation imposed by the lower Court when it refused to consider evidentiary matter beyond that of which it could take judicial notice. For all purposes such a ruling restricted the sources of enlightenment to the Territorial House Journal.

From the above, it is evident that the lower Court has set a precedent which will shackle the judiciary in Alaska from considering any extrinsic evidence that will shed light on the intent of the Alaskan legislative body. It is wholly unreasonable and flies in the face of reality to say that the intent of the 1953 Territorial Legislature must be determined by looking to the House Journal, a publication giving little more than a sketch of what transpired during the legislative session.

It thus becomes imperative that extrinsic—or any proper evidence—be available to ascertain the intent of a legislature which inevitably is primarily made up of laymen. By "proper evidence" Petitioner means that type of proof which does not transcend the accepted rules of evidence. After all, "judicial notice" does no more than relieve a party from having to submit formal proof of a *fact* which has been established to be a matter of common knowledge. *Mills v. Denver Tramway Corporation*, (10th CCA) 155 F 2d 808. However, if an essential fact is not common

knowledge, no good reason is suggested why it cannot still be established by other competent and admissible evidence.

When accurate means of ascertaining intent are available, they should be considered. This is not so much a rule of law as a simple principle of logic, in that it assures reliability rather than speculation. Canons of construction of writings are merely designed to aid in determining the intent of the writer by objective methods. Far more rewarding it is to follow the precepts of the following:

Written or printed reports of legislative standing and special committees. Compare *Gooch v. United States*, 297 U.S. 124 (1936); *Church of Holy Trinity v. United States*, 143 U.S. 457, 464 (1892); *Hood Rubber Co. v. Commissioner of Corporations and Taxation*, 268 Mass. 355, 167 N.E. 670. Written or printed statements made by the draftsmen of the proposed bill, as to their understanding of its nature and effect. *United States v. Whyel*, 28 F. 2d 30 (CCA 3rd); and compare *United States v. Rehwald*, 44 F. 2d 663 (S.D. of California). Written or printed statements made by the executive branch of government while the legislators were considering related bills. See *Shelton Hotel Co. v. Bates*, 4 Wash. 498, 104 Pac. 2d 478. Written or printed opinions by the Attorney General made at a time when the bill was being considered. See *Red Canyon Sheep Co. v. Ickes*, 98 F. 2d 308; *Doyle v. Fox, et al.*, 234 F. 2d 830 (CCA 9th). Written or printed statements of witnesses or interested parties urging amendments or changes in the proposed bill. *Penn Mutual Life Insurance v.*



*Lederer*, 252 U.S. 523, 534 (1920); *Securities and Exchange Commission v. Robert Collier & Co.*, 76 F. 2d 939 (CCA 2d 1935).

If we accept Professor Sutherland's analysis that statutory construction is but a fact issue, and recognize that words are at best inexact tools of expression, then it should follow that all relevant aids, extrinsic or otherwise, should be sought in construing laws. *Harrison v. Northern Trust Co.*, 317 U.S. 476 (1943); *United States v. American Trucking Associations, Inc., et al.*, 310 U.S. 534 (1940). Particularly is this so where the exigencies and circumstances demand this approach as a practical matter. In such instances all legitimate and reasonable means should be used to arrive at the legislative intent and the sources of enlightenment should not be limited. As early as 1804 Chief Justice John Marshall of the Supreme Court of the United States stated:

"... Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived;..." *United States v. Fisher, et al.*, 2 Cranch 358, 386 (1804).

- (1) Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953.

As stated above, the Court refused to admit into evidence and examine the wording originally employed by the author of House Bill No. 3, which was the genesis of Chapter 22, Section 2 of that Bill, when initially introduced, read as follows:

**"Section 2. That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void."**

with this title:

**"An Act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency."**

As the legislative history reveals, House Bill No. 3 was introduced on January 27, 1953 (Appendix "B," p. 30). Within two days thereafter the Committee on Judiciary and Federal Relations reported this Bill back to the House with the recommendation that it "do pass" with the following amendments:

**"The title be changed to read:**

**'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'**

***Section 2 of House Bill No. 3 be deleted.*" (Emphasis added.) (Appendix "C", p. 31.)**

The Bill was then referred to the House Committee on Ways and Means. Within less than a week that Committee recommended that the changes suggested by the Judiciary Committee, including the deletion of Section 2 quoted above, be adopted. On February 11, 1953, the Bill was passed by the House

with the above changes. Thus, the issue of whether or not "all accrued and unpaid taxes" should be "cancelled, repealed and abrogated, and declared null and void" was squarely before the House and rejected in what must be interpreted as an intentional, deliberate and positive act of that body, clearly manifesting its refusal to excuse any unpaid property taxes due and owing prior to the year 1952 (Appendix "D", pp. 32-37).

When House Bill No. 3 reached the Alaska Senate on February 12 of that same year, it was referred to the Senate Committee on the Judiciary and Federal Relations (Appendix "E," p. 38). One week later that Committee returned the Bill with a recommendation that the following amendment be made:

"Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949." (Appendix "F," p. 39.)

No written report or accompanying memorandum appears in the House or Senate Journal suggesting why

this new section was introduced. Even if such document existed, it would not have appeared in the Legislative Journal, for such practice has not been adopted in Alaska as is self-evident by a mere cursory examination of either Journal.

House Bill No. 3 was thereafter referred to the Senate Committee on Taxation and Revenue (Appendix "G," p. 40) and subsequently returned without recommendation other than "that the amendments offered by the Judiciary Committee be adopted" (Appendix "H," pp. 41-42). Two days later the title was amended to include "excepting from repeal certain taxes and tax exemptions." There being no objection, this amendment was also adopted (Appendix "I," p. 43). The Bill passed the Senate in this form and upon being returned to the House the amendment inserted by the Senate was adopted with no objection (Appendix "J," pp. 44-51). Although the Bill was subsequently vetoed by the Governor, it passed when a two-thirds majority in each legislative House overrode the veto (Appendix "K," p. 52).

It is significant to notice at this time that Senate Bill No. 5, identical to House Bill No. 3 in its original form, was completely ignored and abandoned by the Senate, together with the language in Section 2 thereof which also sought to have cancelled, repealed and abrogated all "accrued and unpaid taxes."

In *Brooks v. United States*, 337 U.S. 49 (1949), an automobile in which two servicemen were riding was struck at a highway intersection by an army truck causing the death of one and personal injuries to the



other, under circumstances which, in the case of persons not members of the Armed Forces of the United States, would have given rise to a right of action against the sovereign under the Federal Tort Claims Act. It was contended by counsel for the United States that because the injured persons were servicemen they could not maintain an action under that Act. In refutation of this point, the attorney representing the injured surviving serviceman and the estate, called to the Court's attention the bills originally introduced in Congress, which numbered eighteen, all of which had originally contained exceptions denying recovery to members of the Armed Forces but which in the final act removed such exceptions. The effect of deleting the intended exceptions from the final enactment was discussed by this Court in the following language:

"More than the language and framework of the act support this view. There were eighteen tort claims bills introduced in Congress between 1925 and 1935. All but two contained exceptions denying recovery to members of the armed forces. When the present Tort Claims Act was first introduced, the exception concerning servicemen had been dropped. What remained from previous bills was an exclusion of all claims for which compensation was provided by the World War Veterans Act of [June 7] 1924—43 Stat 607, c 320, 38 USCA § 421, 11 FCA title 38, § 421, compensation for injury or death occurring in the first World War. HR 181, 79th Cong—1st Sess. When HR 181 was incorporated into the Legislative Reorganization Act, the last vestige of the exclusion for members of the armed forces dis-

appeared. See also Note 1, *Syracuse L Rev* 87, 93, 94."

and see *Carey v. Donohue*, 240 U.S. 430, 437, (1916); *Kelm v. Chicago St. P. M. & O. Ry. Co.*, 206 F.2d 831, 833 (CCA 10th); *Nicholas v. Denver & R. G. W. R. Co.*, 195 F.2d 428, 432; *Burnham Hotel Co. v. City of Cheyenne*, 30 Wyo. 458, 222 Pac. 1; *Bender v. City of Fergus Falls*, 111 Minn. 66, 131 N.W. 849; *United Mutual Life Ins. Co. of Indianapolis, Indiana, v. State, ex. rel. Att. Gen.*, 194 Ark. 371, 108 S.W. 2d 484; *Crook, et al. v. Commonwealth*, 147 Va. 593, 136 S.E. 565, 567; *Ex parte Boehme*, 158 Tex. App. 778, 255 S.W. 2d 206.

In *Love v. Wilcox, et al.*, 119 Tex. 250, 28 S.W. 2d 515, the Supreme Court of Texas stated:

"No court could justify putting into a statute by implication what both Houses of the Legislature had expressly rejected by decisive votes. . . . Once the legislative intent is ascertained, the duty of the court is plain. To refuse to enforce statutes in accordance with the true intent of the Legislature is an inexcusable breach of judicial duty, because an unwarranted interference with the exercise of lawful, legislative authority."

The original of House Bill No. 3 was on file with the Secretary of Alaska and a proper certified copy thereof was secured by appellant from that public official. The authenticity was at no time questioned. However, the Court refused to consider this important evidentiary matter solely on the grounds that it was a document of which judicial notice could not be taken. The changes made in House Bill No. 3 from

its original language to its final passage are extremely pertinent and cast a revealing light on the legislative intent. Moreover, the Senate's implied refusal to adopt language which would have excused the unpaid taxes, as was expressed in Senate Bill No. 5, also was deserving of great weight and should not have been ignored.

**(2) The State v. Showers case as precedent.**

The Court below rested its conclusion on the propriety of exclusion of House Bill No. 3 and Senate Bill No. 5 almost wholly upon the opinion of this Court in *Trailmobile Company v. Whirls*, 331 U.S. 40. (1946).

In that case this Court had before it an Act of Congress dealing with the period of time during which seniority rights of a re-employed serviceman after the war were guaranteed by Federal law. The Court refused to give weight to charges which were not only mute but which were also susceptible of different interpretations.

In the instant case the muteness of the legislative maneuvers is comparable to every bill ever passed by the Legislature of the Territory of Alaska. If this is to be a rule of law without exceptions, then Alaska will never be allowed any aids to interpretation until it can afford the luxury of a record similar to the Congressional Record.

When it is proven, as a fact, that a bill which proposes a certain action in express terms was rejected by the Legislature, then it cannot be doubted by a logical mind that some light is shed on the intent of the

Legislature. To the extent that the rejection is unexplained, questions could arise as to the exactitude of the legislative intent, but no one could argue that no aid is shown whatsoever.

Here is our situation. The original bill spelled out the exact result sought by Respondents. The Legislature considered and rejected the proposal. The present bill was adopted. Now a rule of construction rewrites the act to make it read exactly as it originally was written and as it was rejected.

Certainly Petitioner would urge that the consideration and rejection of the original bill by the Legislature forgiving the remission of taxes by express terms is conclusive on a Court's interpretation of the act—even though the muteness of the Legislature may detract from that conclusiveness in the minds of some. But Petitioner is hardly given a chance to so urge.

On the authority of the *Trailmobile* case, *supra*, which laid down a rule dealing with the *weight* to be given to certain evidence in the problem of statutory construction the lower Courts have coined a rule dealing with the *admissibility* of evidence.

Petitioner urges that this court consider the original bill as set out herein and give that weight to it which is due from a logical mind. The conclusion can be none other than that if the legislators had before them the question of remission of over \$1,290,000.00 taxes and rejected such a remission, they would not have entrusted such a task (the remission) to statutory wording which required intricate judicial interpretation.



It might be here pointed out that it would be fantastic for a territorial legislature to release \$1,290,000.00 by *ambiguous implication* when the total appropriation for the *biennium* at that session was \$23,594,992.00 (see Chapter 141, SLA 1953). To say that the Legislature intended to remit a sum exceeding 10% of its annual expenditure by means of a statute requiring such challenging interpretation is to level an impossible charge of financial irresponsibility.

### CONCLUSION.

It is respectfully submitted that the judgment of the Court below should be reversed because its construction of Chapter 22, SLA 1953, is erroneous or because the Act is unconstitutional.

Dated, Juneau, Alaska,  
August 14, 1958.

Respectfully submitted,

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(Appendices Follow.)

## Appendix "A"

### CHAPTER 10, SESSION LAWS OF ALASKA, 1949.

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act".

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" includes all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include", when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint

venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber or patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

**Section 3. LEVY OF TAX.** For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and nonproducing patented mining

claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at \$500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such nonmining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

#### Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS.

The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city and town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.



(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collection shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

## **Section 6. EXEMPTIONS.**

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of \$200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemption shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) **INDUSTRIAL INCENTIVE CLAUSE:**  
The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buldings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.



(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commission and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and

extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

## Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

**Section 8. ADDITIONAL RETURNS.** The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice that person shall comply fully with its requirements within thirty days after its receipt by him.

**Section 9. POWER TO MAKE EXAMINATIONS.**

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

**Section 10. INSPECTION OF RETURN.** No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

**Section 11. VALUATION.** Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be



that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

**Section 12. ASSESSMENT.** Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

**Section 13. TO WHOM ASSESSED.**

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

#### Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

(2) a description of all taxable property;

(3) the assessed value, quantity, or amount of said property and the taxes thereon;

(4) the arrears of taxes owing by any persons; and,

(5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

### Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equalization purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last

known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

**Section 16. COMPLETION OF ASSESSMENT ROLL.** The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplement assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

**Section 17. EFFECT OF ASSESSMENT ROLL.** All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessments entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

**Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS.** All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act



relating to assessment rolls shall, so far as applicable, apply to supplementary assessment rolls.

**Section 19. CORRECTION OF ERRORS BY ASSESSOR.** Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

**Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.**

(a) A copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assessment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.

**Section 21. VALIDITY OF ASSESSMENT ROLLS.** Every assessment roll as completed and certified by the assessor, and as corrected and

amended by him from time to time in conformity with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

**Section 22. DEPOSIT OF ROLL WITH COLLECTOR.** Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

**Section 23. SITTINGS AND RECORDS OF BOARD.** For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment rolls, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

**Section 24. NOTICES BY BOARD.**

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of

assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

#### Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

**Section 26. APPEAL RECORD.** Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

**Section 27. NOTICE OF HEARING.** Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

**Section 28. HEARING OF APPEAL.**

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.



**Section 29. ENTRY OF DECISIONS.** The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

**Section 30. COLLECTION UNAFFECTED BY APPEAL.** Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

**Section 31. APPEAL TO COURT.** Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promul-

gate uniform regulations adapting the above referenced procedure for perfecting such appeals.

**Section 32. TIME OF PAYMENT.** Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

**Section 33. MODE OF PAYMENT.** All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

**Section 34. LIEN.**

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

**Section 35. INTEREST.**

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until

the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

**Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT.** Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder—

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

### Section 37. FALSE RETURNS AND RECORDS.

Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudulently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

### Section 38. DEFACING POSTED NOTICES.

Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 40. LIABILITY OF CORPORATE OFFICERS, ETC. Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any act,



default, or refusal which would subject the organization to criminal liability hereunder, shall be likewise personally guilty of such offense.

**Section 41. PROSECUTIONS.** Prosecutions hereunder for imposing of fines shall be at the instance of the Tax Commissioner and be brought in the name of the Territory.

**Section 42. RECOVERY OF UNPAID LIENS.** On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

**Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.**

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that per-

sons appointed may perform the duties of their offices until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be \$15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:—

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general

convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

**Section 44. TAX COMMISSIONER.** The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a Board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.



**Section 45. SEVERABILITY CLAUSE.** If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

**Section 46. EMERGENCY CLAUSE.** An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

## Appendix "A" "1"

## CHAPTER 88, SESSION LAWS OF ALASKA, 1949.

Section 1. Section 3 of the Alaska Property Tax Act which was House Bill No. 2 of this session of the Legislature, is hereby amended by adding thereto at the end thereof the following language:

With respect to any boat or vessel engaged in marine service on a commercial basis and subject to the provisions of this Act, the owner of said boat or vessel may elect:

(a) To pay the tax levied hereunder on such boat or vessel on the basis of the value thereof as defined herein, or,

(b) To pay \$4.00 per net ton of such vessel's registered tonnage, but in any event the amount payable hereunder, for each such boat or vessel, shall not be less than \$20.00 per annum.

Approved March 23, 1949.

## Appendix "B"

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HOUSE BILL NO. 3.

January 27, 1943, pg. 45

"HOUSE BILL NO. 3 by Mr. Hurley, entitled:

'An Act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency.'

was introduced, read the first time and referred to the Committee on Judiciary and Federal Relations, to be later referred to the Ways and Means Committee."

## Appendix "C"

January 29, 1953, pg. 103

"The Committee on Judiciary and Federal Relations reported HOUSE BILL NO. 3 back to the House with the recommendation that it do pass with the following amendments:

The title be changed to read:

'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Section 2 of HOUSE BILL NO. 3 be deleted.

The report was signed by Mr. Hurley, Chairman, and concurred in by Messrs. Eastaugh, Strainger and Pollock; Mr. Kay recommending that it do not pass.

HOUSE BILL NO. 3 was referred to the Committee on Ways and Means."



**Appendix "D"****February 4, 1953, pg. 142**

"The Committee on Ways and Means, to whom was referred HOUSE BILL NO. 3, reported the same back to the House with the recommendation that it do pass in accordance with amendments proposed by the Judiciary Committee. The report was signed by Mr. Johnson, Chairman, and concurred in by Messrs. Rutherford, Locken, Wilbur, McKinley, Boardman, Rentschler, Mrs. Bullock and Miss Prior.

HOUSE BILL NO. 3 was placed on the calendar for second reading."

**February 5, 1953, pg. 152**

"HOUSE BILL NO. 3 was read the second time.

At the request of Mr. Rutherford and by unanimous consent the following amendments to HOUSE BILL NO. 3, recommended by the Judiciary Committee, were adopted:

Change the title to read: 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Delete Section 2.

At the request of Mr. Hendrickson, Mr. H. L. Faulkner of Juneau was given the privilege of the floor to give information as to HOUSE BILL NO. 3.

It was moved by Mr. Greuel, seconded by Mr. Kay, that the following amendment to HOUSE BILL NO. 3, offered by Mr. Greuel, be adopted:

Delete emergency clause on lines 22, 23 and 25 and insert in its place: 'This Act shall become effective January 1, 1954.'

Change Title, deleting words 'and declaring an emergency.' and substitute 'and establishing an effective date.'

Motion lost.

HOUSE BILL NO. 3 was referred to Committee on Engrossment and Enrollment for engrossment."

February 7, 1953, pg. 175

"The Committee on Engrossment and Enrollment, to whom were referred \* \* \* HOUSE BILL NO. 3, reported that it had found \* \* \* HOUSE BILL NO. 3 correctly engrossed.

\* \* \* HOUSE BILL NO. 3 was placed on calendar for third reading."

February 9, 1953, pg. 192

"It was moved by Mr. Boardman, seconded by Mr. Greuel, that HOUSE BILL NO. 3, on today's Calendar for third reading be re-committed to second reading for the following specific amendment offered by Mr. Boardman:

After word 'Repealed' on line 15, change the period to a semi-colon and add: 'provided, however, that all incentive exemptions granted by the Tax Commissioner under the provisions of subdivision (h), Section 6, Chapter 10, Session Laws of 1949, shall continue in full force and effect for the periods and under the terms contained therein, and all such exemptions which have been so granted within a city, school district or public utility district shall remain in full force

and effect and shall be binding upon the city, school district or public utility district where granted and apply to all municipal, school district and public utility district property taxes in the same manner as exemptions where intended to apply to Territorial property taxes levied by Chapter 10, Session Laws of 1949.'

**Motion carried.**

It was moved by Mr. Boardman, seconded by Mrs. Bullock, that the foregoing amendment be adopted.

It was moved by Mr. Eastaugh, seconded by Mr. Kay, that HOUSE BILL NO. 3 be continued in second reading. Motion carried."

February 10, 1953, pg. 203

"Second reading of HOUSE BILL NO. 3, continued.

The question before the House being, 'Shall the amendment to HOUSE BILL NO. 3, offered by Mr. Boardman, be adopted?' The roll was called with the following result:

Yeas, 11—Boardman, Bullock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Olsen, Rentschler.

Nays, 13—Coghill, Dimock, Hurley, Locken, MacSpadden, McKinley, Pollock, Prior, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

**Motion lost.**

It was moved by Mr. Wilbur, seconded by Mr. Kay, that the Attorney General be requested to appear before the House to give information as to HOUSE

**BILL NO. 3.** The roll was called on the motion with the following result:

Yeas, 13—Boardman, Coghill, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Rentschler, Rutherford, Stringer, Wilbur.

Nays, 11—Bullock, Dimock, Hurley, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Snodgrass, Mr. Speaker.

Motion carried. Mr. Kay thereupon gave notice of his intention to move a reconsideration of his vote on the motion."

\* \* \* \* \*

"It was moved by Miss Prior, seconded by Mr. Wilbur, that the rules be suspended and the vote on Mr. Kay's reconsideration be taken immediately. The roll was called on the motion with the following result:

Yeas, 17—Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, MacSpadden, McKinley, Olsen, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 7—Boardman, Duffield, Fagerstrom, Greuel, Kay, Locken, Pollock.

Motion carried.

The question being, 'Shall the Attorney General be requested to appear to give information as to **HOUSE BILL NO. 3?**' The roll was called with the following result:

Yeas, 14—Boardman, Bullock, Coghill, Eastaugh, Hendrickson, Johnson, Locken, McKinley, Olsen,



Rentschler, Rutherford, Stringer, Wilbur, Mr. Speaker.

Nays, 10—Dimock, Duffield, Ragerstrom, Greuel, Hurley, Kay, MacSpadden, Pollock, Prior, Snodgrass.

Motion carried and the Sergeant at Arms was instructed to request the Attorney General to appear before the House.

\* \* \* \* \*

Attorney General, J. Gerald Williams, appeared before the House to answer questions with reference to HOUSE BILL NO. 3."

February 11, 1953, pg. 218

"Second reading of HOUSE BILL NO. 3 continued.

It was moved by Mr. Hurley, seconded by Miss Prior, that the rules be suspended as to HOUSE BILL NO. 3, that it be considered engrossed, read the third time and placed upon final passage. Motion carried.

HOUSE BILL NO. 3 was read the third time.

Upon motion by Miss Prior, seconded by Mrs. Bullock, the previous question was ordered. The question being, 'Shall the Bill pass?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being 'Shall the emergency clause be adopted, the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rent-schler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as to title of the Act.

HOUSE BILL NO. 3 had been reported correctly engrossed on February 7th and on February 9th had been re-committed to second reading for specific amendment. The specific amendment was not adopted, so the Speaker announced that he had signed HOUSE BILL NO. 3 and ordered the same sent to the Senate."

**Appendix "E"**

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**SENATE ACTION ON HOUSE BILL NO. 3****February 12, 1953, pg. 172**

**"HOUSE BILL NO. 3 by Mr. Hurley, entitled:  
'An Act to repeal the Alaska Property Tax Act  
enacted by Chapter 10, Session Laws of Alaska,  
1949, as amended by Chapter 88, Session Laws of  
Alaska, 1949, and declaring an emergency,'**

**was read the first time and referred to the Committee  
on Judiciary and Federal Relations."**

**Appendix "F"**

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February 19, 1953, pg. 244

The Committee on Judiciary and Federal Relations to whom was referred HOUSE BILL NO. 3 returned the same to the Senate with the report it had found HOUSE BILL NO. 3 in proper legal form and recommended the following amendments:

Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949.

The report was signed by Senator Stepovich, Chairman, and concurred in by Senators Jensen, Jones and Robison. HOUSE BILL NO. 3 was ordered placed on the Daily File for second reading."



**Appendix "Q"**

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February 20, 1953, pg. 261

**"HOUSE BILL NO. 3 was read the second time.**

Senator Egan asked unanimous consent to have **HOUSE BILL NO. 3** re-submitted to the Committee on Taxation and Revenue.

Objection was voiced.

Senator Egan so moved; seconded by Senator Nolan.

The question being, 'Shall Senator Egan's motion to re-submit **HOUSE BILL NO. 3** to the Committee on Taxation and Revenue pass?', the roll was called with the following result:

Yeas, 10—Barnes, Beltz, Butrovich, Coble, Egan, Engstrom, Ipalook, Lhamon, Lyng, Nolan.

Nays, 6—Gorsuch, Jensen, Robison, Snider, Stepovich, Mr. President.

And so the Motion carried, and **HOUSE BILL NO. 3** was re-submitted to the Committee on Taxation and Revenue."

**Appendix "H"**

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**February 25, 1953, pg. 309**

**"The Committee on Taxation and Revenue reported HOUSE BILL NO. 3 back to the Senate without recommendation but that the amendments offered by the Judiciary Committee be adopted. The report was signed by Senator Engstrom, Chairman, and concurred in by Senators Lhamon and Ipalook; Senator Robison recommended that it do pass. HOUSE BILL NO. 3 was placed on the Daily File for second reading."**

**February 26, 1953, pg. 338**

**"HOUSE BILL NO. 3 was read the second time. Senator Stepovich asked unanimous consent for the adoption of the amendment offered by the Committee on Judiciary and Federal Relations as follows:**

**Insert new Section 2 as follows:**

**Section 2. Section 1 of this Act shall not be applicable to:**

**(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and**

**(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska, 1949. Renumber present Section 2 to Section 3.**

There being no objection, the amendments were adopted.

At the request of Senator Egan and with unanimous consent of the Senate, HOUSE BILL NO. 3 will be held in second reading for further amendments."

**Appendix "P"**

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February 28, 1953, pg. 363

**"HOUSE BILL NO. 3 was again considered in second reading.**

**The following amendment was offered by Senator Stepovich:**

**Page 1, Line 9. After '1949' remove the comma, insert a semi-colon; and then add the following: 'excepting from repeal certain taxes and tax exemptions'.**

**Senator Stepovich asked unanimous consent for the adoption of the amendment. There being no objection, the amendment was adopted.**

**HOUSE BILL NO. 3 was referred to the Committee on Engrossment and Enrollment for engrossment."**



## Appendix "J"

March 3, 1953, pg. 383

"The Committee on Engrossment and Enrollment reported that it had found \* \* \* HOUSE BILL NOS. \* \* \* 3 \* \* \* correctly engrossed. \* \* \* HOUSE BILL NOS. \* \* \* 3 \* \* \* were placed on the General File."

March 5, 1953, pg. 435

"HOUSE BILL NO. 3 was read the third time.

At the request of Senator Snider and with unanimous consent of the Senate, Mr. H. L. Faulkner, Juneau attorney, was given the privilege of the floor to speak on HOUSE BILL NO. 3.

\* \* \* \* \*

HOUSE BILL NO. 3 was continued and Mr. Faulkner concluded his talk on same.

Senator Egan asked unanimous consent of the Senate that the Attorney General of Alaska be heard on HOUSE BILL NO. 3. There being no objection, it was so ordered and the Senate recessed until the Attorney General was summoned.

\* \* \* \* \*

HOUSE BILL NO. 3 (continued)

Attorney General J. Gerald Williams was given the privilege of the floor to speak on HOUSE BILL NO. 3.

\* \* \* \* \*

HOUSE BILL NO. 3 (Continued).

Mr. A. J. ('Tiny') Chichoski, member of the United Fishermen of Alaska, from Kodiak, was heard on HOUSE BILL NO. 3.

Senator Barnes assumed the Chair to permit the President to be heard on HOUSE BILL NO. 3.

The President resumed the Chair.

The question being, 'Shall HOUSE BILL NO. 3 pass the Senate?', the roll was called with the following result:

Yeas, 10—Barnes, Coble, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 6—Beltz, Butrovich, Egan, Engstrom, Ipalook, Nolan.

And so the Bill passed.

The secretary called the roll on the emergency clause with the following result:

Yeas, 12—Barnes, Butrovich, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Egan, Ipalook, Nolan.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as the title of the Act."

### HOUSE ACTION ON HOUSE BILL NO. 3.

March 6, 1953, pg. 516

"A message from the Senate was read, transmitting HOUSE BILL NO. 3, which had passed the Senate with the following amendments:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility

district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

Renumber present Section 2 to Section 3

Page 1, line 9, after '1949' remove the comma, insert semicolon, and add the following:

'excepting from repeal certain taxes and tax exemptions'.

It was moved by Mr. Rutherford, seconded by Mr. Eastaugh, that that House concur in Senate amendments to HOUSE BILL NO. 3. The roll was called on the motion with the following result:

Yeas, 22—Boardman, Bullock, Coghill, Dimock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 1—Kay.

Absent, 1—Hurley.

And so the House concurred and HOUSE BILL NO. 3 was ordered enrolled."

March 7, 1953, pg. 525

"The Committee on Engrossment and Enrollment reported that it had found \* \* \* HOUSE BILLS NOS. 3 \* \* \* correctly enrolled. \* \* \*

The Speaker announced that he had signed \* \* \* HOUSE BILLS NOS. 3 \* \* \* and ordered the same sent to the Senate for the signatures of the President and Secretary.

A message from the Senate was read transmitting the enrolled copies of \* \* \* HOUSE BILLS NOS. 3 \* \* \* signed by the President and Secretary. Said Bills were ordered sent to the Governor."

"The following message from the Governor was read:

March 11, 1953, pg. 580

**'TERRITORY OF ALASKA**

Office of the Governor

**JUNEAU**

March 11, 1953

Speaker of the House  
Twenty-First Territorial Legislature  
Juneau, Alaska

Dear Mr. Speaker:

In my message to the Legislature I touched generally on a few of the points which seemed to warrant retention of the property tax. Nor do I desire to repeat those in detail beyond mention that our well rounded tax structure, which has received expressions of approval from members of the Congress, will, if this tax is repealed, be no longer so well diversified, so well balanced, and so widely distributed if one of the three basic elements is removed. In addition, it may be noted that there is no place in the union where a real property tax is not levied, either by the state or its lesser subdivisions, or both, and few places where it is so low as 1%. Our sister Territory,



Hawaii, has an elaborate tax structure which features a tax on real property. In my Message I likewise referred to the fact that Congress looks to Alaska to participate increasingly in its own financing as a token of good faith, warranting continued federal expenditures in the Territory. Some of these expenditures, which we in Alaska consider essential, are now in jeopardy: we should do nothing further to jeopardize them. It is also apparent that despite our substantial surplus, that the growing needs of the Territory are being recognized by this Legislature and that we are embarking on a perilous course if at the very outset of our era of growing population and expansion we rescind one important and substantial source of revenue. I would also like to stress the value of the property tax, beyond its revenue, in furnishing the Territory with the important machinery for determining and keeping current a record of property ownerships.

However, there is one entirely new point which I have not hitherto touched, which I feel the Legislature should consider. That is the matter of discrimination which would automatically follow repeal of the property tax.

In the fifteen year period, between 1934 and 1949—that is to say, before the enactment of the Territorial Property Tax—people living in municipalities and school districts were obliged to pay, by way of municipal and school district taxes, one-third of the cost of operating and maintaining their schools while the Territory contributed the remaining two-thirds. During this same period persons residing outside of cities or school districts paid no property taxes and thus con-

tributed nothing directly for the support of their schools. The entire cost of construction, repair, operation and maintenance, was borne by the Territory. This means that the people living in municipalities and school districts were paying not only for their own schools but through general taxation for the rural schools as well. A typical example of this discrimination, should the property tax be repealed, is called to my attention by Admiral (Squeaky) Anderson, who pointed out that the cannery which he operates within the city limits of Seldovia has been paying property taxes, while two other canneries just outside the local limits will, if the tax is repealed, make no such contribution. We may well ask whether such a practice is equitable and fair.

I have on hand also an unsolicited letter from a man with whom I am not personally acquainted, from Petersburg, who writes me as follows:

"As a taxpayer of both real estate and of a documented vessel, taxable under the Alaska General Property Tax Act, I implore you to veto the bill recently passed by the Alaska Legislature repealing the General Property Tax. Speaking from personal experience I can truthfully say that this repeal act is not in accordance with wishes of the people in my community."

So the fact is that the repeal of the property tax will not remove any discrimination but will recreate one against all Alaskans living in urban and suburban communities. The real effect of the enactment of that law four years ago was to remove discrimination and to distribute more equitably the cost of government over all inhabitants in the Territory.

Those urban and suburban taxpayers constitute a substantial majority of the people of Alaska. By repeal of the property tax they will be discriminated against in favor of the far smaller number living outside of incorporated cities and school districts. It is difficult for me to justify so manifest an injustice.

It is therefore with regret that I am obliged to veto H. B. 3, an Act to Repeal the General Property Tax.

Sincerely yours,

s/ ERNEST GRUENING,  
Governor of Alaska.'

Mr. Wilbur asked for a call of the House, and the Veto Message was made a first order of business at 11:00 A.M. today.

### SPECIAL ORDER OF BUSINESS

The question now being, 'Shall HOUSE BILL NO. 3 pass the House notwithstanding the veto of the Governor?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rent-schler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being, 'Shall the emergency clause be adopted?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.



## Appendix "K"

And so the emergency clause was adopted.

The House having passed HOUSE BILL NO. 3 notwithstanding the veto of the Governor, the Chief Clerk was instructed to so advise the Senate."

### SENATE ACTION ON GOVERNOR'S VETO ON H. B. NO. 3

March 12, 1953, pg. 561

"SENATOR Engstrom asked unanimous consent that the Rules be suspended and that HOUSE BILL NO. 3 and the Governor's Veto Message be considered at this time. There being no objection, it was so ordered.

Senator Engstrom moved that the Senate pass HOUSE BILL NO. 3, the Governor's veto notwithstanding, seconded by Senator Barnes.

The question being, 'Shall HOUSE BILL NO. 3, the Governor's veto notwithstanding, pass the Senate?', the roll was called with the following result:

Yeas, 11—Barnes, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Butrovich, Egan, Nolan.

Not Voting, 1—Ipalook.

And so the Motion carried and the Bill passed, the Governor's veto notwithstanding.

The President ordered HOUSE BILL NO. 3 returned to the House."

**Appendix "L"**

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**SECTION 19-1-1 ALASKA COMPILED LAWS ANNOTATED, 1949,  
AS AMENDED BY CHAPTER 4 SLA—EX. SESSION, 1955.**

"Section 1. Section 19-1-1 ACLA, 1949 is hereby amended to read as follows:

Sec. 19-1-1. Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."

# In the Supreme Court

OF THE

**United States**

OCTOBER TERM, 1958

**No. 40**

TERRITORY OF ALASKA,

*Petitioner,*

vs.

AMERICAN CAN COMPANY; FIDALGO ISLAND  
PACKING COMPANY; LIBBY, McNEILL &  
LIBBY, INC.; NAKAT PACKING COMPANY;  
NEW ENGLAND FISH CO.; P. E. HARRIS  
COMPANY, INC.; PACIFIC & ARCTIC RAIL-  
WAY & NAVIGATION CO.; and OCEANIC  
FISHERIES CO.,

*Respondents.*

On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit.

## REPLY BRIEF FOR THE PETITIONER.

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# **In the Supreme Court**

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WAY & NAVIGATION Co.; and OCEANIC  
FISHERIES Co.,**

*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit.**

## **REPLY BRIEF FOR THE PETITIONER.**

---

### **I. INTRODUCTION.**

**Petitioner, Territory of Alaska, herewith makes  
reply to the Brief for the Respondents.**

Initially, at page 13 of Respondents' Brief, the assertion is made that the Territory of Alaska is not seriously challenging the validity of the repealing act, which is Chapter 22, SLA 1953. The implication is that the constitutional question of the validity of the repeal is raised solely to "bring the case within the scope of the rules" relative to granting certiorari.

Petitioner states that this question is presented as a bulwark of its case and as alternative affirmative relief sought herein. Respondents themselves, at page 35 of the Brief for the Respondents, acknowledge the earnestness of Petitioner's point by stating:

"... If it is unconstitutional it must fall and the court will not give it a construction not warranted by its terms in order to avoid such a result.

"The rule of construction asserted by Petitioner may be correct but it has no application here. The Repealing Act by its plain terms saves some taxes and not others. If this offends the Constitution then the Act is void and the courts are powerless to change it. ..."

The charge (Resp. Br., p. 14) that the validity of Chapter 22, SLA 1953, is a constitutional question which Petitioner raised only to bring the case within the rules of this Court regarding the granting of certiorari is obviated by the fact that presence of a "constitutional question" is not a condition to a grant of certiorari as implied by Respondents.

The jurisdiction of appeals from Alaskan courts is laid to the Court of Appeals for the Ninth Circuit. 62 Stat. 930, 28 U.S.C., § 1294. By way of writ of

certiorari, *all* cases in the courts of appeals may be reviewed by the Supreme Court. 62 Stat. 928, 28 U.S.C., § 1254. By Rule 19 of the Rules of the Supreme Court, a writ of certiorari is a matter of sound judicial discretion, the grant of which is predicated solely upon "special and important reasons."

The necessity of a "constitutional question" or, more properly, a federal question is found as a prerequisite to the grant of certiorari to review a decision of a state court.

Elsewhere (Resp. Br., p. 2) (while referring the Court to a telegram which purports to be from the Tax Commissioner of the Territory of Alaska and which is outside the scope of the record), Respondents object to the introduction of a statement by Petitioner not supported by the record (Pet. Br., p. 6) as to the number of people to be affected by this suit. The statement was made in proper conformity to Rule 19 of the Rules of the Supreme Court to indicate the importance of the litigation.

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## **II. THE ARGUMENT THAT PETITIONER HAS NO AUTHORITY TO CHALLENGE THE VALIDITY OF THE REPEAL.**

It is the clear duty of the Attorney General to engage in a suit for the collection of revenue under Territorial law. See § 9-1-5, ACLA 1949 (Appendix "A").

Further, the Attorney General is broadly empowered to challenge the validity of all statutes under § 9-1-8, ACLA 1949 (Appendix "B").



Respondents cite *Commonwealth of Massachusetts v. Mellon, Secretary of the Treasury*, 262 U.S. 447 (1923), as controlling for the proposition that since the Petitioner, Territory of Alaska, is not of the class discriminated against, it therefore has no standing to challenge the validity of the act.

Such indicates a misconception of the import of the cited case. The authority of that case is properly laid to the proposition that a state may not, as *parens patriae*, act to protect its citizens from the operation of a *federal* statute enacted by Congress. The underlying theory is obvious in a federated form of government. There is dual citizenship. When state citizenship is involved, the state properly acts on behalf of its citizens. (See *Missouri v. Illinois*, 180 U.S. 208, 241 (1901), as cited in the *Massachusetts v. Mellon* case, *supra*.) Federal citizenship is involved when the relationship is between the individual and the national government and there is no room or need for state intervention. In such relationship, the United States is the protector. This concept is the whole of the impact of *Massachusetts v. Mellon, supra*, as may be seen at page 485 *et seq.* of the official reports. As to cases distinguishing and explaining *Massachusetts v. Mellon, supra*, see *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 445 (1944), and *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315, 339, *et seq.* (1935).

The instant case involves an imputation of invalidity by the Petitioner, Territory of Alaska, of a Territorial statute. There can be little doubt that the Territory has responsibilities toward its people. The analogy to a state is logical in this instance.

The theory of territorial government has ever been to afford complete and statelike local autonomy consistent only with the national plenary power. (See *Clinton, et al. v. Englebrecht*, 13 Wall. 434, 441 (1872).) Consequently, it is contended that Petitioner (over and above the express statutory authority found in ACLA 1949 (Appendix "B")) to challenge the constitutionality of territorial enactments) may raise the discrimination herein involved to the extent that a state may do so.

There is little question that a state, through its chief legal officer, has great standing to challenge legislation which is contrary to the state or Federal Constitution. It has been held that where the validity of an act of the state legislature is in doubt, the state is always an interested party, and its Attorney General may exercise his judgment as to what type of action may be brought to have the matter determined. *State ex rel. Brewster v. Doane*, 98 Kan. 435, 158 P. 38, 40. See also *Ex parte Bass*, 328 Mo. 125, 40 S.W.2d 457, 460; *State ex rel. Porterie v. Walm-sley*, 181 La. 597, 160 So. 91; and *People v. Building Maintenance Contractors Ass'n.*, 41 Cal.2d 719, 264 P.2d 31, 36. The power of the Attorney General to attack statutes which in his opinion are unconstitutional is not a mere right but a duty, and the rule that one may not attack the validity of a statute unless his rights are affected applies only to private persons. *State ex rel. Landes v. S. H. Kresse & Co.*, 115 Fla. 189, 155 So. 823, 826, 825; *Wilens v. Hendrickson*, 133 N.J. Eq. 447, 33 A.2d 366, 375. This power has also been recognized in prosecuting attor-

neys because of the public interest involved. *State ex rel. Evans v. Brotherhood of Friends*, 41 Wash.2d 133, 247 P.2d 787, 792.

Further, whether or not the Territory of Alaska in relation to the people of Alaska may act as *parens patriae*, Petitioner has standing under the rule laid down by *Buchanan v. Warley*, 245 U.S. 60, 72 (1917). A person who is directly injured by the legislation may attack the discriminatory statute even though not of the class discriminated against. The theory underlying the objection to an attack by a non-discriminated party is to ensure that the controversy be real and vital and to prevent the championing of the cause of another. However, the rule becomes uselessly broader than the purpose it is to serve if the power to assail the statute is limited solely to a member of the discriminated class. One who is directly aggrieved by the legislation, and as to whose claim the determination of a constitutional question is fairly relevant, should be permitted to raise the question. See *Quong Ham Wah Co. v. Industrial Accident Commission*, 184 Cal. 26, 192 P. 1021.

Also, even if the application of the rule were so restricted, it is to be seen that there is a well-recognized exception permitting a person who is not a member of the class discriminated against to attack the statute as being an invalid discrimination. The exception is when no member of the class so discriminated against is in a position to raise the question. *Green v. State*, 83 Neb. 84, 119 N.W. 6. Such a situation now confronts us in the instant case. Those who have paid the tax in Alaska have done so under

a valid law. Having paid the tax, they have no recourse, and the issue cannot be resolved unless here raised by Petitioner.

In closing upon this point, Petitioner would address notice to the case of *Carroll v. Socony-Vacuum Oil Co.*, 136 Conn. 49, 68 A.2d 299. That case is important in its discussion and disposition of two points raised herein, to wit: Petitioner's standing to challenge the validity of Chapter 22, SLA 1953, and the unconstitutional discrimination involved in that repeal. That case involved a gasoline tax collected by distributors of gasoline from their vendees, one per cent of which by statute was allowed to be withheld by the distributor as payment for the collections. Subsequently, the tax levying act was amended and the provision allowing the distributors to retain the one per cent collection fee was omitted. However, the omitted provision was erroneously printed in the state cumulative supplements and, consequently, for many years the distributors continued to retain the tax. In *Anastasio v. Gulf Oil Corp.*, 131 Conn. 708, 42 A.2d 149, it was held that the provision had been repealed prior to inclusion in the cumulative supplements. Thereupon, thirty-one distributors paid over \$7,000.00. The General Assembly then passed a statute expressly allowing those who had erroneously withheld the one per cent to retain the moneys so withheld. The state attacked this latter statute as being an illegal discrimination against the thirty-one who had paid. The court held that the state could properly raise the question of the discrimination although not of the injured class. Further, the court held that a statute that relieves



from liability those who have not paid, and at the same time makes no provision for refunding the sums to those who have paid, is such as to violate the Fourteenth Amendment and the Constitution of the State of Connecticut. The court then remanded the suit for consideration of the circumstances under which the thirty-one people paid the tax.

This case is directed to the Court's attention because of its rare similarity to the problem at hand and to the issues herein raised.

Petitioner further asserts that it has standing to foster the issue of unconstitutionality if for no other reason than to support the proposition (See Pet. Br., p. 16) that where an act is susceptible of more than one construction, one of which is of doubtful validity, the courts should adopt that interpretation which renders the act valid.

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### III. THE QUESTION OF WHETHER THE FOURTEENTH AMENDMENT APPLIES TO THE TERRITORY OF ALASKA.

Respondents contend that the Fourteenth Amendment does not apply to the Territory of Alaska, citing *Boling v. Sharpe*, 347 U.S. 497 (1954) and *Far-ington, Governor v. Tokushige*, 373 U.S. 284 (1927) (Resp. Br., p. 16). Neither case stands as authority for the proposition that the Fourteenth Amendment does not govern the Territory of Alaska.

In *Boling, supra*, this Court held that the Equal Protection Clause of the Fourteenth Amendment is not applicable to the District of Columbia. In *Far-*

*ington, supra*, it was held that the Due Process Clause of the Fifth Amendment applied to the Territory of Hawaii. However, in both cases it was expressly pointed out that the Fifth Amendment, which applies to territories, and the Fourteenth Amendment, which is a restriction upon the sovereign states, are not separate and distinct concepts of political protection. They are not mutually exclusive.

In the *Boling* case, it was said at page 499 that the Equal Protection Clause:

"... is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be a violation of due process."

It was said that a classification by race was such as to deprive the unfavored class of due process. It is here asserted that a classification which classifies a delinquent taxpayer for favoritism is also faulty under the Due Process safeguard of the Fifth Amendment. It cannot be justified in terms of the theory of equality before the law.

Respondents have assumed the Fourteenth Amendment only restricts a state of the Union, since in its terms it applies only to a state. They assume Congress has not used its plenary power to protect citizenship of the Territory of Alaska from an unequal burden of laws. This implies that the legislature of a mere territory is more powerful than a sovereign state.

Such is not the case. The Fourteenth Amendment in its entirety restricts the territorial legislature, and not solely through any similarity of concepts with the Fifth Amendment's Due Process Clause. This is so because Congress, in its plenary power over territories, has extended the Constitution to the Territory of Alaska. Section 2-1-1, ACLA 1949, reads as follows:

"Constitution and laws of the United States extended: Continuation of existing laws. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature. [37 Stat 512; CLA 1933, § 463; 48 USC § 23.]"

In *Hess v. Mullaney*, (9th Cir. 1954), 180 F.2d 805, 817, it was held as follows:

"It therefore appears that whether we were to hold that the Fourteenth Amendment applies to Alaska in the same way, and for the same reasons that the Fifth Amendment does, or whether the limitations stated in this amendment have been made applicable to territorial legislation by this section of the Organic Act, the tests and standards to be applied are the same. ..."

The court then proceeded to liken the Equal Protection Clause to 48 U.S.C., § 78, § 48-1-1, ACLA 1949, of the Organic Act (See Pet. Br., p. 4). Since § 48-1-1, ACLA 1949, is hereby likened to the Equal Protection Clause, the concepts of that clause are also brought into play by Petitioner's challenge of the validity of Chapter 22 under that section of Alaska's Organic Act (Pet. Br., p. 15).

Therefore, the Fourteenth Amendment's Due Process Clause is pertinent either directly, which need not be decided, or through the extension of the Constitution by Congress to the Territory of Alaska. Further, it is illuminating as to an explanation of the meaning of 48 U.S.C.A., § 78, § 48-1-1, ACLA 1949.

Respondents, at page 20 *et seq.* of their brief, state that a legislature has broad power as to classification. It is submitted that a power to classify a group by reason of its tax delinquency for the purpose of awarding it with a forgiveness of taxes is a very broad power indeed. It is said that the burden is on Petitioner to negative every conceivable basis which might support the classification. Since reward for tax delinquency is the result of such action, the classification is "hostile and oppressive discrimination" on its face. No recorded case has ever held or implied such a classification to be proper.

Beginning at page 17 of Respondents' Brief, it is asserted (citing cases) that under the common law a repeal of a statute extinguishes all penalties and liabilities created by the statute unless kept alive by special provision. Respondents then suggest that the



rule is of long standing and, consequently, it does not violate the Constitution or the Organic Act of Alaska. Petitioner contends that the validity of the rule is not in question here, but rather its application. The statute must be tested, not by its form, but by its operation and effect. *Near v. State of Minnesota*, 283 U.S. 697, 708 (1931).

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#### IV. THE RULES OF STATUTORY CONSTRUCTION.

Petitioner will now consider the objections of Respondents to two of the rules of construction advanced by Petitioner in its Brief on Merits:

1. *The First Rule.* On page 35 of Respondents' Brief, the rule that the courts must seek a valid construction of an act which is susceptible of more than one construction is considered. Respondents simply emasculate the rule by stating that if the act is unconstitutional it should fall, and if it is constitutional it should stand. Also, Respondents would believe that this repeal (which compelled the court below to resort to more than one rule of construction) is in plain terms.

2. *The Second Rule.* In attacking the second rule, that an unjust result is to be avoided, set forth by Petitioner (Pet. Br., p. 16), Respondents argue that there is no injustice. However, the district court in its opinion (R. 67) recognizes the latent injustice to the class of taxpayers who have paid the tax. Also, while probably the most disputed abstract ideal is justice, it is Petitioner's position that none can help but

feel that the uneven burden placed upon those who paid the tax is inequitable.

**V. OBJECTION TO CONSIDERATION OF HOUSE BILL NO. 3 AND SENATE BILL NO. 5 OF THE TWENTY-FIRST SESSION OF THE ALASKA LEGISLATURE.**

Respondents (Resp. Br., p. 34) object that the original Senate and House bills encompassing the repeal later found in Chapter 10 cannot be considered here for the reason that they are not in the record, that Respondents have not been given a chance to rebut them, that the case is not now open for the reception of evidence, and that the case was not open for the reception of evidence in the trial court. It is further objected that Senate Bill No. 5, unlike House Bill No. 3, was never even offered in evidence.

The appellate court below (R. 88) "held" that Senate Bill No. 5 and House Bill No. 3 are indistinguishable. Therefore, Senate Bill No. 5, although not formally offered in evidence, was before the court; and had House Bill No. 3 been admitted in evidence, it would have been simple enough as recognized by the appellate court (R. 87, 88) to direct the district court's attention to page 32 of the 1953 Senate Journal. By the appellate court's holding that the above-cited page of the Senate Journal would show the two bills to be indistinguishable, it is to be seen that Respondents are in no way prejudiced by not having had Senate Bill No. 5 offered in evidence at the same time House Bill No. 3 was offered. It is

also to be noticed that an authenticated copy of Senate Bill No. 5 was filed with the Territory's Brief (see R. 87).

The Court's attention is directed to the reporter's transcript of plaintiff's offer of proof on October 28, 1955 (R. 48), where the court stated:

"... In such a hearing we cannot introduce evidence of something other than the acts of the Legislature or such matters as Journal entries, of which the Court could take judicial notice, indicating any such intent or indicating the question of intent. . . ."

After making this ruling, the court later in the hearing was of the opinion that the matter should be decided on the merits (R. 52) and thus the hearing became more than a hearing on a procedural question. Consequently, inasmuch as the court first rejected Petitioner's offer of evidence and then proceeded to decide the case on the merits, the door was completely shut upon any evidence which could shed light on the legislative intent other than that of which the court decided to take judicial notice. Thus, this aspect of the case was decided in a vacuum of legislative intent. As to a discussion of the court's duty to make use of all available aids to determine the meaning and intent of the legislature, see Petitioner's Brief on Merits, page 23 *et seq.* By way of cogency rather than redundancy, Petitioner would apprise the Court of the fact that merely inspecting the Senate and House Journals of the Territory of Alaska will give no reward other than a hollow knowledge of the title of bills intro-

duced, amended, and passed, and the ayes and nays of the individual legislators thereon. It is this brief skeleton of legislative history to which the courts below have restricted themselves. The Court's notice is directed to Appendices "B" through "K" in Petitioner's Brief on Merits. The Territory of Alaska attempted to shed light upon the austerity of those proceedings as recorded in the legislative journals by introducing in evidence the original of House Bill No. 3, which was identical to Senate Bill No. 5, and which showed the express attempt to forgive these taxes as rejected by the Legislature.

In short, the Legislature rejected a bill which would have expressly forgiven this tax and then adopted a bill (Chapter 22) which merely repealed the Alaska Property Tax Act and saved taxes accruing after the effective date of the repeal. Respondents would have us believe that a responsible legislature, after considering and rejecting a bill which by its express terms would have forgiven an amount of tax in excess of ten per cent of the current revenues, turned around and accomplished the same forgiveness by a vague implication.

The true interpretation of the repeal is found in the remarks of Judge Healy in dissenting from the majority at page 89 of the Record, which is that there is no special saving clause relating to prior taxes accrued under the Alaska Property Tax Act. The material part of Chapter 22 is Section 2(a), which saves, for municipalities, schools, and public utility districts, (1) taxes which had accrued between the



date when general liability for the tax would cease (January 1 of the current year) and the date of the passage of the act, and (2) future taxes which would be levied during the current fiscal year. Consequently, this section does not constitute a special saving clause which could be in conflict with the Territorial General Saving Statute. The Territorial General Saving Statute relates solely to tax liability before January 1 of that year.

#### CONCLUSION.

For the reasons stated herein and in Petitioner's Brief on Merits, it is submitted that the judgment below should be reversed.

Dated, Juneau, Alaska,  
November 1, 1958.

Respectfully submitted,

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(Appendices Follow.)



## Appendix "A"

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### Section 9-1-5, *Alaska Compiled Laws Annotated 1949*

**Duties.** The Attorney General of Alaska shall be the official legal advisor of the Governor, the Treasurer, the Secretary, and other officers of the Territory. He shall bring, prosecute and defend in the name of the Territory, all necessary and proper actions or suits for the collection of the revenue under Territorial laws; he shall file informations and prosecute all offenses against the revenue, and other laws of the Territory, prosecution of which is not otherwise provided for; he shall when requested by the Legislature or any member thereof, give legal advise [advice] concerning any law or proposed law or legislative measure; he shall take cognizance of all memorials passed by the Territorial Legislature, shall urge on the various organizations or persons to whom such memorials are addressed, the necessity for the action prayed for in the memorial, and shall submit to the next Legislature, a report on the memorials theretofore passed by previous Legislatures; and all such other duties as may be required by law, or as usually pertain to the office of Attorney General in a Territory; and he shall make through the Governor, to the Legislature, at each regular session thereof, a report of the work and expenditures of the office, and upon needed legislation or amendments to existing laws.

[*Bills, memorials and resolutions.*] It shall be the duty of the Attorney General to draft and prepare in proper form for introduction such bills, memorials or

resolutions as may be requested by any member of the Legislature, the Governor, or any other Territorial official. He shall consult with members, officers and committees of the Legislature, when requested, upon pending bills or measures, and at the request of a member of the Legislature shall prepare amendments to bills, memorials or resolutions under consideration by either house.

Requests for the preparation of bills, memorials, or resolutions shall be transmitted to the Attorney General and the Attorney General shall keep a complete record of all requests received of proposed bills, memorials and resolutions in progress and completed, and such other information as may be requisite to expedite legislation and to avoid duplication of effort. Such record shall be open to inspection by any member of the Legislature, or any Territorial official; provided, however, that the name of the person submitting a request shall not appear in the record if the person requesting so desires. Any member of the Legislature, the Governor, or any Territorial official may examine this record and upon written request the Attorney General shall transmit, in writing, any information therefrom desired by such person.

## Appendix "B"

---

### Section 9-1-8, *Alaska Compiled Laws Annotated 1949*

Instituting or participating in litigation: Testing validity of laws: Private suits involving questions of importance to Territory. Whenever the constitutionality or validity of any statute is seriously in doubt, and the enforcement of such statute affects the Territory or a considerable portion of its people or important industries therein, suits or actions may by the Attorney General be instituted in the name of the Territory in any court to determine the constitutionality or validity of such law. And such proceeding may be had for that purpose either by means of suits to restrain, or by means of action to compel, the enforcement of such law, or by any other appropriate proceeding that will bring the question at issue fairly before the court. Or, the Attorney General may for such purpose institute or defend actions or suits for private individuals or corporations, and at the expense of the Territory, whenever the importance of the questions involved to the inhabitants of the Territory shall warrant it; but no such proceeding shall be instituted or maintained in the name of the Territory or at its expense except with the approval of the Governor, Auditor and Treasurer or any two of them in the manner hereinafter provided.



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JOHN T. FEY, Clerk

**In the Supreme Court**  
OF THE  
**United States**

OCTOBER TERM, 1958

No. ~~800~~ 170

TERRITORY OF ALASKA,

vs.

*Petitioner,*

AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,

*Respondents.*

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# In the Supreme Court

OF THE  
**United States**

OCTOBER TERM, 1957

No. 833

TERRITORY OF ALASKA,

*Petitioner,*

vs.

AMERICAN CAN COMPANY, FIDALGO  
ISLAND PACKING COMPANY, LIBBY,  
MCNEILL & LIBBY, INC., NAKAT PACK-  
ING COMPANY, NEW ENGLAND FISH  
Co., P. E. HARRIS COMPANY, INC.,  
PACIFIC & ARCTIC RAILWAY & NAVI-  
GATION Co., and OCEANIC FISHERIES  
Co.,

*Respondents.*

## BRIEF FOR RESPONDENTS.

NO CASE FOR WRIT OF CERTIORARI IS SHOWN  
BY THE PETITION.

### I.

#### EXCLUSION OF EVIDENCE AND STATUTORY CONSTRUCTION.

The first two questions presented by the petition deal with exclusion of evidence by the trial Court and

the interpretation of a territorial statute by the Appellate Court. Obviously neither question is of a nature or of such importance that this Court will grant certiorari. Petitioner apparently feels the same way since neither proposition receives additional mention in the petition. Nor will we elaborate on them further.

## II.

### **DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW.**

Petitioner states (Pet. 10) that by its petition for rehearing filed in the Appellate Court "your appellant injected the issue of constitutionality \* \* \*". This is a true statement. No question of constitutionality was previously urged or considered in either the trial or Appellate Courts. The statement of points upon appeal (Record 70, 71) fails to mention the issue of constitutionality; nor was it mentioned in the briefs or arguments below.

No such question existed below and none exists here except as "injected" by appellant in the hope of bringing the case within the scope of the rules and precedents of this Court respecting the granting of certiorari.

Petitioner (Pet. 3) asks whether the territorial statute repealing the Alaska Property Tax Act as construed by the Court below "is valid under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and Section 9 of the *Alaska Organic Act*, 48 U. S. 78, Sec. 48-1-1 ACLA 1949".

**(a) Fourteenth Amendment Not Applicable to Territories.**

Petitioner at this point ignores the fact that the Fourteenth Amendment applies only to the sovereign states, *Boling v. Sharpe*, 347 U.S. 497; 74 S. Ct. 693; and has no force in the territories, *Farrington, Governor v. Tokushige*, 373 U.S. 234; 47 S. Ct. 406.

Petitioner's reference to Section 9 of the Alaska Organic Act is not clear. This is an act of Congress delegating limited legislative power to the Territorial Legislature "not inconsistent with the constitution and laws of the United States". Such language clearly does not make the Territory a state nor extend to it the provisions of the constitution, applicable only to states.

In *Farrington, Governor v. Tokushige, supra*, involving application of constitutional restrictions to Territorial legislation, the Court applied the "due process" clause of the Fifth Amendment and not the similar language of the Fourteenth Amendment.

**(b) Statutory Construction Not a Constitutional Question.**

Nor is *Mullaney v. Anderson*, 342 U.S. 415, 420; 72 S. Ct. 428, 431; 13 Alaska 574, 580, helpful to petitioner's position. There the Court, after pointing out that Congress has extended the constitution to Alaska and delegated legislative power over "all rightful subjects of legislation not inconsistent with the constitution and the laws of the United States", held that it could not be presumed "that Congress authorized the Territorial Legislature to treat citizens of a state the way states cannot treat citizens of sister states".

The Court further said that, "only the clearest expression of congressional intent could induce such a result. It is not present". The Act failed for lack of delegated authority and not because of the constitutional inhibitions.

The same result is reached if it be asserted that the action of the Territorial Legislature is prohibited by the *Civil Rights Act*, 16 Stat. 144, Title 42 U.S.C. Sec. 1981. That prohibition although similar to the Fourteenth Amendment is by act of Congress and not by force of the constitution. These are questions for the trial and appellate Courts; although the record fails to disclose that they were raised there.

**(c) Lower Court Decisions Correct.**

But even if Alaska were a state, which it isn't, and the Fourteenth Amendment applied, which it doesn't, and the point had been raised by petitioner below, which it wasn't, the lower Court's decision would have been the same. Equal protection of the laws is not denied and discrimination is not practiced by the application of established principles of common law respecting the construction of statutes and the effect of repeals. Cases cited by petitioner arose in state Courts and concerned the construction and application of state constitutions and state laws. In every instance it was the constitution of the state which was offended; not the Constitution of the United States.

**(d) No Violation of Fifth Amendment.**

Elsewhere in the petition (Pet. 11) it is alleged that the Territorial Act as interpreted below "consti-



tutes a denial of due process and equal protection of the laws under the Fifth \* \* \* Amendments". The Fifth Amendment is applicable but it contains no provision respecting equal protection of the laws. It does prohibit the taking of life, liberty or property without due process of law. There is no suggestion that life or liberty are involved here.

That leaves property. But who is being deprived of property without due process of law? Certainly not petitioner. What of the 11,504 who paid in excess of four hundred thousand dollars in taxes under the Act before its repeal? (Pet. 7, 16.) How are they denied due process of law? Some of them contested the validity of the tax act on that very ground. The Act was held valid by the Circuit Court of Appeals for the Ninth Circuit in *Hess v. Mullaney*, 213 F. 2d 635; 15 Alaska 40, and certiorari was denied by this Court. The petition for certiorari raised the question of violation of the Fifth Amendment. (*Luther C. Hess, et al., Pet. v. Karl F. Dewey, Commissioner of Taxation of the Territory of Alaska*, No. 266, 348 U.S. 836; 75 S. Ct. 50.)

In the lower Courts petitioner wisely refrained from asserting the Territorial Repealing Act to be in violation of the Fifth Amendment. None of the alleged defects run counter to the due process clause. This Court denied a similar effort in *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 400; 60 S. Ct. 907, 916, where Justice Douglas said:

"Appellant contends that the statutory classification \* \* \* and the application of the \* \* \* tax

\*\*\* are improper under the Fifth Amendment. Its objection is not premised on lack of due process nor could it be in view of the elaborate machinery and procedure for the act's enforcement which Congress has provided. Rather appellant's objection is founded on its claim of discrimination. But the Fifth Amendment, unlike the Fourteenth, has no equal protection clause."

This Court was equally specific in *Helvering v. Lerner Stores*, 314 U.S. 463, 468; 62 S. Ct. 341, 343, where Justice Douglas pointed out that the contention that the provisions of the act, there under consideration, run afoul of the Fifth Amendment was without merit and said that "a claim of unreasonable classification or inequality in the incident of the application of a tax, raises no question under Fifth Amendment which contains no equal protection clause".

Again in *Detroit Bank v. United States*, 317 U.S. 329, 337; 63 S. Ct. 297, 301; this Court declared that "unlike the Fourteenth Amendment the Fifth Amendment contains no equal protection clause and provides no guaranty against discriminatory legislation by Congress."

(c) "Due Process of Law" means "the Law of the Land".

The lower courts afforded petitioner "due process of law" when they applied the ancient and universal rule of the common law which provides that the repeal of a statute extinguishes all penalties and liabilities created by the statute and unpaid on the date of the

repeal unless the same are kept alive by a specific saving clause. The rule applies to repealed tax statutes and was well established in England before the adoption of the federal constitution. *Rex v. Justices of London*, 3 Burr 1456. It was reiterated in 1804 by Justice Washington in *United States v. Passmore*, 4 Dallas 372; 1 L. ed. 871. See also *Norris v. Crocker*, 13 Howard 429; 14 L. ed. 210; *ex parte William McCordle*, 7 Wallace 506; 19 L. ed. 264; *Flanagan v. County of Sierra*, 196 U.S. 553; 25 S. Ct. 314. There is no authority to the contrary.

The lower court further held that "on reason and authority \* \* \* the repealing statute \* \* \* means precisely what it says" (Pet. App. 42) and that the special saving clause of the repealing statute nullified petitioner's alleged rights under the general saving statute. There was ample authority for such holding.

This is "the law of the land" which this Court in *Den v. Hoboken Land and Improvement Co.*, 18 Howard 272, 276; 15 L. ed. 372, 374, held was undoubtedly intended to convey the same meaning as due process of law. In that decision it is pointed out that Lord Coke in his commentary (2 Inst. 50) on the words by "the law of the land" as used in Magna Charta says that they mean "due process of law".

Petitioner was accorded "due process of law" but "by the law of the land" his case failed.

**(f) Petitioner Has No Capacity to Raise Question.**

But this is not all. Even if the constitutional questions had merit, still petitioner has no capacity or authority to raise them either here or below.

Petitioner would have the Court declare the Territorial Repealing Statute unconstitutional. But the Court will grant such relief in proper cases only by enjoining enforcement of the invalid statute by officials charged with that duty. Such officials are not before the Court unless it be the Attorney General of Alaska who appears here for petitioner. Petitioner's counsel can hardly seek an order against himself.

But it was said long ago by Justice White in *Del Castillo v. McConnico*, 168 U.S. 674; 18 S. Ct. 229, 232, petitioner "is limited solely to the inquiry whether, in the case of petitioner, the effect of applying the statute is to deprive him of his property without due process of law". (Emphasis supplied.) Petitioner's property was not taxed. "The mere fact that a state is plaintiff is not enough", *Florida v. Mellon*, 273 U.S. 12; 47 S. Ct. 265, 266, and a territory has no better standing than a state. *Puerto Rico v. Secretary of Agriculture*, 338 U.S. 604; 70 S. Ct. 403. See also *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288; 56 S. Ct. 466, 472. *Georgia v. Pennsylvania*, 324 U.S. 439; 65 S. Ct. 716. The alleged discrimination, inequality and failure of due process of law, if it existed, could injure only those people who paid taxes levied under the act before its repeal. Petitioner is not of the group and cannot represent the group. *Massachusetts v. Mellon*, 262 U.S. 447; 43



S. Ct. 597, 600. As Mr. Justice Cardoza said in *Henneford v. Silas Mason Co.*, 300 U.S. 577, 583; 57 S. Ct. 524, 527; 81 L. ed. 814, "the plaintiffs are not the champions of any rights except their own".

---

**CONCLUSION.**

The petition should be denied.

Dated, Juneau, Alaska,  
March 12, 1958.

W. C. ARNOLD,  
H. L. FAULKNER,  
R. E. ROBERTSON,  
*Attorneys for Respondents.*

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**JAMES R. BROWNING, Clerk**

**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1958**

**No. 40**

**TERRITORY OF ALASKA, *Petitioner,*  
vs.**

**AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING  
COMPANY, LIBBY, McNEILL & LIBBY, INC., NAKAT PACK-  
ING CORPORATION, NEW ENGLAND FISH CO., P. E. HAR-  
RIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVI-  
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**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1958**

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**No. 40**

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**TERRITORY OF ALASKA, *Petitioner,*  
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COMPANY, LIBBY, McNEILL & LIBBY, INC., NAKAT PACK-  
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GATION Co., and OCEANIC FISHERIES Co., *Respondents.***

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT**

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# Supreme Court of the United States

OCTOBER TERM, 1958

TERRITORY OF ALASKA,

*Petitioner,*

vs.

AMERICAN CAN COMPANY, FIDALGO ISLAND  
PACKING COMPANY, LIBBY, McNEILL &  
LIBBY, INC., NAKAT PACKING CORPORATION,  
NEW ENGLAND FISH Co., P. E.  
HARRIS COMPANY, INC., PACIFIC & ARCTIC  
RAILWAY & NAVIGATION Co., and  
OCEANIC FISHERIES Co., *Respondents.*

No. 40

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT.

## BRIEF FOR THE RESPONDENTS

### STATEMENT OF THE CASE

Petitioner has set forth a reference to the opinions delivered in the courts below, together with a statement of the questions presented which is in accordance with the Petition for Certiorari. Petitioner has also listed the constitutional provisions and statutes which it contends are applicable. We do not agree that the Fourteenth Amendment has any application to cases arising in Alaska during territorial status.

Respondents feel that the statement of the case as presented by petitioner is designed to create the impression that respondents are tax evaders and law violators. In order to further this impression petitioner has included statements not supported by the record or advanced below prior to petition for rehearing in

the Circuit Court. We refer to the statement on page 6 of petitioner's brief to the effect that 11,504 people paid the tax here in question and that 8,689 did not. This statement is not supported by the record in this case. Respondents have had no opportunity to rebut it. Nor does petitioner disclose that the Territory was refusing proffered payments of the tax levied and due under the Alaska Property Tax Act pending determination of its validity. See Appendix C, page 45.

For these reasons and in order that the Court may know the entire background of the legal and legislative controversy respecting the Alaska Property Act and its repeal we set forth a Chronological Statement of the Controversy.

## **CHRONOLOGICAL STATEMENT OF CONTROVERSY**

### **1. February 21, 1949**

The Alaska Property Tax Act, hereinafter in this Chronological Statement, called the Act, was passed and approved February 21, 1949 (Chap. 10 SLA 1949).

### **2. December 2, 1949**

On December 2, 1949, and before any taxes were due under the Act, Luther (Lester) C. Hess brought an action in the United States District Court at Fairbanks, against M. P. Mullaney, Commissioner of Taxation for the Territory of Alaska, challenging the validity of the Act and seeking to enjoin its enforcement (P. 2, Transcript of Record, United States Court of Appeals for the Ninth Circuit, No. 12, 675, *M. P. Mullaney, Commissioner of Taxation, Territory of Alaska v. Luther C. Hess and Alaska Juneau Gold Mining Co.*),

*Hess v. Mullaney*, D.C. Alaska, 1950, 12 Alaska 696, 91 F.Supp. 139.

**3. January 30, 1950**

On January 30, 1950, and before any taxes were due under the Act, a Preliminary Injunction was issued by the United States District Court at Fairbanks, restraining Mullaney, the Tax Commissioner, from enforcing the Act (P. 33, Transcript of Record, United States Court of Appeals for the Ninth Circuit, No. 12, 675, *M. P. Mullaney, Commissioner of Taxation, Territory of Alaska v. Luther C. Hess and Alaska Juneau Gold Mining Co.*), *Hess v. Mullaney, supra*.

**4. June 19, 1950**

On June 19, 1950, the United States District Court at Fairbanks rendered an opinion holding the Act to be invalid and permanently enjoining its enforcement. *Hess v. Mullaney, supra*.

**5. February 10, 1951**

On February 10, 1951, and while the permanent injunction enjoining enforcement of the Act was still in effect, House Bill No. 41, "An Act to repeal Chapter 10 of the Session Laws of Alaska, 1949, known as the Alaska Property Tax Act, as amended by Chapter 88, Session Laws of Alaska, 1949," was introduced in the Territorial Legislature, then in session (Journal of the House of Representatives, Territory of Alaska, Twentieth Session (1951) P. 236). Counsel for Respondents advised their clients that if House Bill No. 41 was enacted into law that their liability would be limited to taxes levied under the Act for the years 1949 and 1950

even if the Act was declared valid on the pending appeal. No liability is asserted against three of these respondents for those years (R. 25, 29, 37). Liability is asserted against a fourth respondent for only one of those years (R. 33).

#### **6. March 13, 1951**

On March 13, 1951, and while the permanent injunction enjoining enforcement of the Act was still in effect, House Bill No. 41, "An Act to repeal Chapter 10 of the Session Laws of Alaska, 1949, known as the Alaska Property Tax Act, as amended by Chapter 88, Session Laws of Alaska, 1949," was passed by the Territorial House of Representatives by a vote of 14 to 10 (Journal of the House of Representatives, Territory of Alaska, Twentieth Session (1951) P. 758). It was transmitted to the Territorial Senate then in session, but since it arrived after the forty-fifth day it could only be received under suspension of the rules and the rules were not suspended (Senate Journal of the Twentieth Legislature, Territory of Alaska (1951) P. 596).

#### **7. May 10, 1951**

The case of *Hess v. Mullaney*, *supra*, was appealed to the United States Court of Appeals for the Ninth Circuit and on May 10, 1951, the Appellate Court ruled that an injunction was not the proper remedy because there was a remedy at law. The court held that the tax could be paid under protest and a suit brought to recover. The court did not pass on the validity of the Act, or criticize the view expressed by the trial court that the Act was invalid. *Mullaney v. Hess*, 189 F.2d 417, 13 Alaska 276.



### 8. June 8, 1951

Hess paid the tax under protest and on June 8, 1951, brought a suit against Mullaney, Commissioner of Taxation, seeking to recover the tax (P. 5, Transcript of Record, United States Court of Appeals for the Ninth Circuit, No. 13,533, *Luther C. Hess and Alaska Juneau Gold Mining Co. v. M. P. Mullaney, Commissioner of Taxation*, Certiorari denied, October Term 1954, No. 266, 348 U.S. 836, 75 S.Ct. 50).

### 9. February 18, 1952

The District Court at Juneau filed an opinion on February 18, 1952, holding the Act to be valid and denying recovery to Hess. The decision was a variance with the previous holding by the District Court at Fairbanks, thus creating a conflict of opinion which could only be settled by the Appellate Court. *Hess v. Mullaney*, 13 Alaska 564, 102 F.Supp. 430.

### 10. July 8, 1952

Final action in the case was delayed and the trial court did not act until July 8, 1952, when Judgment and Decree dismissing the action were entered (P. 68, Transcript of Record, United States Circuit Court of Appeals for the Ninth Circuit, *Hess v. Mullaney*, No. 13,533).

### 11. August 4, 1952

The case was appealed to the United States Circuit Court of Appeals for the Ninth Circuit August 4, 1952 (P. 71, Transcript of Record, United States Circuit Court of Appeals for the Ninth Circuit, *Hess v. Mullaney*, No. 13,522).

**12. January 27, 1953**

On January 27, 1953, and before the taxes levied under the Act for 1952 were due, House Bill No. 3 repealing the Act and abrogating and repealing all accrued and unpaid taxes levied thereunder, was introduced in the Territorial Legislature which was then in session (Journal of the House of Representatives, Territory of Alaska, Twenty-first Session (1953) p. 45). Counsel for respondents advised their clients that passage of House Bill No. 3 would extinguish liability for taxes levied under the Act even if the Act was declared valid on the pending appeal.

**13. January 28, 1953**

On January 28, 1953, and before the taxes levied under the Act for 1952 were due, Senate Bill No. 5 repealing the Act and abrogating and repealing all accrued and unpaid taxes levied thereunder, was introduced by the President and ten other members of the Territorial Senate. The Territorial Senate is composed of a total of sixteen members and was then in session (Senate Journal of the Twenty-first Legislature (1953) of the Territory of Alaska, p. 32). Counsel for respondents advised their clients that passage of Senate Bill No. 5 would extinguish liability for taxes levied under the Act even if the Act was declared valid on the pending appeal.

**14. March 12, 1953**

On March 12, 1953, and while the case was still pending on appeal, the Territorial Legislature enacted Chapter 22 Session Laws of Alaska, 1953, hereinafter called the Repealing Act. By the terms of the Repeal-

ing Act as understood by counsel for respondents and as later construed by the trial court and the Circuit Court of Appeals, the tax liability of respondents was extinguished and as stated by the Circuit Court "is no longer of any force or effect—as to past, present, or future years." Counsel for respondents so advised their clients.

#### 15. May 25, 1954

The Circuit Court affirmed the District Court on May 25, 1954, and held the Act valid. *Hess v. Mullaney*, 15 Alaska 40, 213 F.2d 635. Certiorari denied. *Luther C. Hess, et al., Pet. v. Karl F. Dewey, Commissioner of Taxation of the Territory of Alaska*, No. 266, 348 U.S. 836, 75 S.Ct. 50.

#### 16. April 9, 1955

Between April 9th and May 31st, 1955, the Territory of Alaska commenced the pending actions in the United States District Court at Juneau, seeking collection of taxes and interest for the years 1949-1952 inclusive, against four of the respondents and for the years 1950-1951 and 1952 only, against one respondent, and for the years 1951-1952 only, against three of the respondents (R.. pages 1 to 39 inc.).

#### 17. January 4, 1956

On January 4, 1956, the United States District Court at Juneau rendered an opinion dismissing complaints in all actions on the ground that a personal action could not be maintained for the collection of taxes levied on property pursuant to the Act and upon the further ground that the taxes levied for the years in question did not survive the repeal. The court in its opinion

stated that in view of the holding, it was unnecessary to consider the question of the Statute of Limitations (R. 56). *Territory of Alaska v. American Can Co., et al.*, 16 Alaska 71, 137 F.Supp. 181.

#### **18. February 7, 1956**

On February 7, 1956, the Territory appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the order dismissing the complaints (R. 70).

#### **19. November 14, 1956**

On November 14, 1956, the Circuit Court of Appeals dismissed the action from the bench for want of jurisdiction because of the lack of a Final Judgment (R. 80). *Territory of Alaska v. American Can Co., et al.*, 246 F.2d 493.

#### **20. December 11, 1956**

On December 11, 1956, Final Judgment was entered in the District Court at Juneau and a new appeal taken (R. 80). *Territory of Alaska v. American Can Co., et al.*, 246 F.2d 493.

#### **21. June 27, 1957**

The Circuit Court rendered its opinion holding that the taxes in question did not survive the repeal and that it was not necessary to pass on the question of whether or not a personal action could be maintained (R. 77) 246 F.2d 493.

#### **22. July 25, 1957**

On July 25, 1957, a petition for rehearing was filed in the Circuit Court (R. 92).



### **23. December 4, 1957**

Petition for rehearing was denied on December 4, 1957 (R. 94).

### **24. February 21, 1958**

Petition for certiorari was filed in the United States Supreme Court (Petition, p. 17).

### **25. April 7, 1958**

Certiorari was granted (R. 95) | *Territory of Alaska, Pet. v. American Can Co., Fidalgo Island Packing Co., Libby, McNeil & Libby, Inc., et al., No. 833, — U.S. —, 78 S.Ct. 717.*

### **Summary**

Thirty-seven months elapsed between February 1, 1950, when taxes levied under the Act first became due, and March 12, 1953, when the Act was repealed.

During the first fifteen months of this period the Territory was enjoined from enforcing the Act and during part or all of that period the Territorial Tax Commissioner was refusing to accept payment of the tax and during thirty days of the periods the Territorial Legislature was actively considering repeal of the Act.

During the last twenty-two months of the period the opinion of the District Judge at Fairbanks, holding the Act invalid, had not been overruled and during eight months of that period it was the law of Alaska; during the last six weeks of such period it was reasonably apparent that the Act would be repealed.

During the entire thirty-seven months that the Act was in effect and for an additional thirty-seven months thereafter, the Territory made no effort to enforce payment of the tax.

## SUMMARY OF ARGUMENT

### A. The Constitutional Question.

The Petitioner did not raise any constitutional question in the courts below and does not really desire the court to declare the statute unconstitutional. No such relief is requested by the pleadings. The constitutional question was raised to bring the case within the rules respecting certiorari. Petitioner has no capacity to raise the constitutional question either here or below. The unconstitutional discrimination if it existed, could injure only those who paid taxes under the Repealing Act. Petitioner is not of that group and cannot represent the group or champion any alleged right except its own. Nor is the Constitution offended. The Fourteenth Amendment does not apply during territorial status. The Fifth Amendment contains a "due process" clause only and there was no lack of "due process" here. Nor is the Repealing Act in violation of the Alaska organic law which the Ninth Circuit Court has said requires no greater measure of uniformity and equality than the Fourteenth Amendment and that under the rule laid down in *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S.Ct. 406, a classification such as alleged to exist here is a valid exercise of the legislative power. The majority of the cases cited by the Petitioner involve legislative efforts to remit or forgive penalty, interest or a portion of the tax under current and continuing tax statutes in states where such action was contrary to a provision of the state constitution not found in the United States Constitution. Only one of the cases construes an act repealing a tax statute and there the decision turned on a provision of

the state constitution and a finding that the repealing act was prospective only. The case arose in Florida where the state court both before and after the decision applied the universal rule that "the effect of the repealing statute is to obliterate the statute repealed as completely as if it had never been enacted, except for the purposes of those actions or suits that were commenced, prosecuted, and concluded while it was an existing law."

### **B. The Taxes Did Not Survive the Repeal**

Under the common law the repeal of a statute extinguished all penalties and liabilities created by the statute and unpaid on the date of repeal unless the same are kept alive by a specific saving clause. The rule applies to repealed tax statutes, and was established in England before the adoption of the Federal Constitution, it was reiterated by Justice Washington in 1804 and has been followed in many decisions of this court since. It was applied by the Second Circuit in construing the Portal to Portal Act and by the Ninth Circuit in construing the repeal of the National Prohibition Act. The rule has been announced in many state courts. There is no authority to the contrary. Petitioner does not challenge this principle but contends that the saving section of the Repealing Act does not override the earlier general saving statute and that therefore all taxes due under the Act at the time of its repeal were saved and not just the taxes which the Repealing Act specifically directed should be saved. This question was determined squarely against Petitioner in the courts below. The reasoning of the Appellate Court as set forth in its decision cannot be successfully challenged.

The rule applied there has been stated and followed by this court and in several of the circuits. It is well established in California, Kansas and a legion of other states. By reason and authority the taxes levied and due under the Alaska Property Tax Act on the date of its repeal were, with the exception of those taxes specifically saved (and not involved here), in the words of the Appellate Court "no longer of any force or effect—as to past, present or future years."

### **C. There Was No Error in the Rejection of Evidence**

There was no error in the rejection of House Bill No. 3 offered in evidence in the District Court during argument on a Motion to Dismiss or refusal of the Appellate Court to consider Senate Bill No. 5 not offered in evidence in the District Court but inserted in the record on appeal by Petitioner. The case was not open for the reception of evidence in the District Court or the Appellate Court and the situation is no different here. The Appellate Court concluded that the proffered documents shed no light on the controversy not available from an inspection of the legislative journals which may be judicially noticed. Respondents agree. The legislature did not want to "abrogate and repeal all accrued and unpaid taxes," as provided in House Bill No. 3 as introduced. It wanted to except from the repeal and save taxes levied in the past or to be levied in the future pursuant to the Repealing Act by municipalities, school and public utility districts. The legislature amended the bill accordingly.

### **D. Statutory Construction**

The rules of statutory construction advanced by Pe-



tioner may be true in the most part but they are not applicable here.

### **E. Miscellaneous**

The Statute of Limitations is applicable and was pleaded by respondents below. The trial court held that no personal action could be maintained against these respondents and that neither the tax nor remedy survived the repeal and that "in view of this decision the question of the Statute of Limitations need not to be considered." The Circuit Court held that the taxes did not survive the repeal and therefore did not consider either the question of personal liability or the Statute of Limitations. These questions are not covered by the Petition for Certiorari and are not before this court. However, they are meritorious.

## **ARGUMENT**

### **First Question Presented**

Petitioner by the first question presented in its brief, asserts on page 16 thereof, that the special saving clause of Chap. 22, SLA 1953, repealing the Alaska Property Tax Act, violates the due process and equal protection clauses of the Fourteenth Amendment and is also violative of Section 9 of Alaska's Organic Act. We question whether the Territory seeks that result. It was not requested in the pleadings or suggested in the courts below.

It seems apparent that Petitioner does not really seek to have the Repealing Act set aside on constitutional grounds, but rather to have this court overrule the decision of the Circuit Court holding "that with respect to the taxes here in question, Chap. 10, SLA 1949, is no longer of any force or effect — as to past,

present or future years." The constitutional question is posed in order to bring the case within the scope of the rules and precedents of this court respecting the granting of *certiorari*. The decision of the trial court reaches the identical result with that of the Circuit Court and is based on similar reasoning and the same authorities. Petitioner saw no constitutional questions on appeal from that decision.

But this is not all. Even if the constitutional questions had merit, still Petitioner has no capacity or authority to raise it either here or below.

### **Petitioner Has No Capacity to Raise Constitutional Question**

Petitioner would have the court declare the Repealing Statute unconstitutional. But the court will grant such relief in proper cases only by enjoining enforcement of the invalid statute by officials charged with the duty of enforcing it. Such officials are not before the court unless it be the Attorney General of Alaska who appears here for Petitioner. Petitioner's counsel can hardly seek an order against himself.

"The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws, to the executive the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other and neither may control, direct, or restrain the action of the other. We are not now speaking of the merely ministerial duties of officials. *Gaines v. Thompson*, 7 Wall. 347, 19 L.ed. 62. We have no power *per se* to review and annul acts of Congress on the ground that they are

unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding." *Commonwealth of Massachusetts v. Mellon, Secretary of the Treasury*, 262 U.S. 447, 488; 43 S.Ct. 597, 601.

Long ago Justice White in *Del Castillo v. McConico*, 168 U.S. 674; 18 S. Ct. 229, 232, a case similar to the one at bar said, "The plaintiff in error has no interest to assert that the statute is unconstitutional, because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether, in the case of petitioner, the effect of applying the statute is to deprive *him of his property* without due process of law." (Emphasis supplied.) Petitioner's property was not taxed. "The mere fact that a state is plaintiff is not enough," *Florida v. Mellon*, 273 U.S. 12, 47 S.Ct. 265, 266, and a territory has no better standing than a state. *Puerto Rico v. Secre-*

*tary of Agriculture*, 338 U.S. 604, 70 S.Ct. 403. See also *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 56 S.Ct. 466, 472. *Georgia v. Pennsylvania*, 324 U.S. 439, 65 S.Ct. 716. The alleged discrimination, inequality and failure of due process of law, if it existed, could injure only those people who paid taxes levied under the act before its repeal. Petitioner is not of the group and cannot represent the group. As Mr. Justice Cardoza said in *Henneford v. Silas Mason Co.*, 300 U.S. 577, 583, 57 S.Ct. 524, 527, 81 L.ed. 814, "the plaintiffs are not the champions of any rights except their own."

### **The Constitution Is Not Offended**

Nor do we think the Constitution or the Alaska Organic Act is offended by the "Special Saving Clause" or any other part of Chap. 22 SLA 1953, hereinafter called the Repealing Act.

First of all, this case arose under territorial status and the Fourteenth Amendment upon which Petitioner relies applies only to the sovereign states. *Boling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, and has no force in the territories, *Farrington, Governor v. Tokushige*, 373 U.S. 234, 47 S.Ct. 406.

In *Farrington, Governor v. Tojushige, supra*, involving application of constitutional restrictions to territorial legislation, the court applied the "due process" clause of the Fifth Amendment and not the similar language of the Fourteenth Amendment.

### **The Fourteenth Amendment Not Violated**

If the Fourteenth Amendment were applicable it would require that the Repealing Act be tested against



the "due process" and "equal protection" clauses, of that Amendment. Where is the violation? There certainly has been no denial of due process of law. The Fifth Amendment which is applicable under territorial status, contains a "due process" clause also. Its application is discussed *infra*.

This leaves the "equal protection" requirement. If the Repealing Act denies equal protection of the laws it must be because the Territorial Legislature is inhibited from repealing its own tax laws without including a provision excepting unpaid taxes from the repeal. Such a restriction of the legislative power finds no support in the Alaska Organic Act wherein Congress provided that the legislative powers "should extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States." Section 9 *Organic Act of Alaska*, 37 Stat. 514, Sec. 77, Title 48 USC. Section 3 of the same Organic Act provided that with exceptions not material here "all laws now in force in Alaska shall continue in full force and effect until amended or repealed by Congress, or the legislature [of Alaska]." Section 3 of the Organic Act of Alaska, *supra*. Among those laws was Section 796, Compiled Laws of Alaska 1913, extending the common law to Alaska and now found with amendments in Alaska Compiled Laws Annotated, 1949, Sec. 2-1-2 thereof.

The common law requires exactly the opposite conclusion contended for by Petitioner. Under the common law the repeal of a statute extinguishes all penalties and liabilities created by the statute and unpaid on the date of repeal unless the same are kept alive by a specific saving clause. The rule applies to repealed tax stat-

utes and was well established in England before the adoption of the Federal Constitution. *Rex v. Justices of London*, 3 Burr. 1456. It was reiterated in 1804 by Justice Washington in *United States v. Passmore*, 4 Dallas 372, 1 L.ed. 871. See also *Norris v. Crocker*, 13 How. 429, 14 L.ed. 210; *Ex parte William McCardle*, 7 Wall. 506; 19 L.ed. 264; *Flanigan v. County of Sierra*, 196 U.S. 553, 25 S.Ct. 314. *Hertz v. Woodman*, 218 U.S. 205, 30 S.Ct. 621. It was applied by Circuit Court of Appeals in construing the Portal-to Portal Act. *Botogala v. General Motors* (2d Cir. 1948) 169 F.2d 254. Also by the Circuit Court for the Ninth Circuit in construing the repeal of the National Prohibition Act, *Green v. United States*, 67 F.2d 846, where *Flannigan v. County of Sierra*, which applied to the construction of a repealed tax statute, is cited with approval. See also *Wilmington Trust Co. v. United States* (D.C. Del.) 28 F.2d 205. There is no authority to the contrary. State decisions supporting this rule are legion. See *Crow v. Cartledge* (Miss. 1911) 54 So. 947; Annotated Cases 1913 E 470 and note. The note beginning on page 471 of Annotated Cases 1913 E deals with the "effect of repeal of statute imposing license fee or tax, on tax due but unpaid." The author states:

"It is a well settled rule, with which the reported case is in accord, that in the absence of a special provision therefor, the repeal of a statute which imposes a license fee or tax has the effect of abrogating all rights to the collection of a license fee or tax obtained under the statute as effectually as if it had never been in force."

Authorities are cited from England, Indiana, Iowa, Mississippi, Maine, Pennsylvania, Alabama, and New

Jersey. See also *Vance v. Rankin*, (Ill. 1902) 62 N.E. 807, and many federal and state cases there cited. The rule was applied in Wyoming in 1942 in *Robinson v. Gallagher*, 125 P.2d 157, and in 1953 by Arizona in *Gustafson v. Rajkovich*, 263 P.2d 540.

This principle was not challenged by Petitioner in the courts below and in no decision of this Court or of the Circuit or District Courts has it been suggested that application of this long-standing rule of the common law violated any provision of the United States Constitution. Congress saw no constitutional interference, with this established principle of the common law, when it passed a general saving statute in 1871, before the Alaska legislative assembly was created. If the Constitution is not offended neither is the Alaska Organic Act.

Nevertheless, Petitioner asserts on page 15 of its Brief that the Repealing Act violates the provisions of the *Alaska Organic Act*, *supra*, requiring that:

"All taxes shall be uniform on the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, \* \* \*."

This contention is not elaborated further. The provisions of the Alaska Organic Act quoted, clearly applied to laws imposing taxes and not to laws repealing tax acts. Furthermore, as was said by the Circuit Court of Appeals for the Ninth Circuit in *Alaska Steamship Co. v Mullaney*, 180 F.2d 805, 817, 12 Alaska 594, 619, this provision of the Alaska Organic Act "requires no greater measure of uniformity and equality than does the equal protection requirement of the Fourteenth Amendment."

The only basis upon which the Repealing Act could offend the language of section 9 of the Alaska Organic Act above, is that the language of the Repealing Act saving some taxes and not others constitutes an arbitrary and unreasonable classification such as would violate the Fourteenth Amendment if it were applicable. This seems to be the argument advanced by Petitioner on page 12 of its Brief.

This contention will not stand examination. First, the saving clause of the Repealing Act has nothing to do with the assessment of taxes but only with their collection. This Court in *Tappan, Collector of Taxes, etc., v. The Merchants National Bank of Chicago* (1873), 86 U.S. 490, 504, 22 L.ed. 189, 195, speaking through Chief Justice Waite said:

“The constitution does not require uniformity in the manner of collection. Uniformity in the assessment is all it demands.”

Second, the charge that Territorial tax legislation established arbitrary and unreasonable classification has been considered by the courts before. Once in connection with the Alaska Property Tax now repealed, and which is the basis in the Territory's claim in this case. See *Hess v. Mullaney*, 213 F.2d 635, 15 Alaska 40, wherein the Circuit Court held that the different treatment accorded to property outside municipalities, school and public utility districts on the one hand and property within such municipalities and districts on the other, by the Alaska Property Tax Act, did not contravene section 9 of the Alaska Organic Act. The Circuit Court cited its previous decision in *Alaska Steamship Company v. Mullaney*, 180 F.2d 805, 12 Alaska 594,



reaching the same results in construing the Alaska Net Income Tax law.

Both Circuit Court cases cited the decision of this Court in *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S.Ct. 406. In that well-known case Justice Reed, speaking for the court, pointed to the broad discretion as to classification possessed by a legislature in the field of taxation and said:

"Since the members of a legislature necessarily enjoy a familiarity with local conditions which this court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

This burden is one that Petitioner cannot carry and has not attempted to carry. Where is the showing by "the most explicit demonstration" that the classification established by the Repealing Act, if it is a classification, is a "hostile and oppressive discrimination." Petitioner has made no attempt to negative any basis which might support the alleged classification, whether "conceivable" or otherwise.

The classification, if it is a classification, differentiates between those whose property is within municipalities, school and public utility districts, and those whose property is outside. This is a classification specifically approved in *Hess v. Mullaney*, *supra*, at the urging of this Petitioner.

Under the common law rules the taxes not saved by the repeal become non-existent. The Legislature must

be presumed to have known this and to have had a reason for their action. As said in *Madden v. Commonwealth of Kentucky, supra*, they "necessarily enjoy a familiarity with local conditions which this court cannot have," they might well have considered the refusal of the Tax Commissioner to accept proffered tax payments (Appendix C) or the fact that some municipalities refused to levy the tax provided for by the act, *Hess v. Mullaney*, 213 F.2d 635, 642, 15 Alaska 40, 51. The Legislature may have anticipated that the act would be declared invalid in which event those who had paid under protest could recover. The Legislature could have, but was under no legal obligation to refund taxes paid prior to the repeal. The decision might well have been postponed pending the outcome of the pending appeal. There are a myriad of reasons which could have impelled the Legislature. None of those suggested constitute "a hostile and oppressive discrimination against particular persons and classifications."

### **The Fifth Amendment**

Although not raised in the questions presented in the Petition for Certiorari or in the questions presented in the Brief on its Merits, Petitioner on page 15 of its Brief, asserts that the Repealing Act constitutes a denial of the "due process" clause of the Fifth Amendment. The proposition is not further elaborated by Petitioner. No authority is cited and none is known to exist. It is difficult to envisage application of the principle here. Who is being deprived of property without due process of law? Certainly not Petitioner. No claim is made or could be made that the Territory has any property involved here. The contention is that people

who paid taxes under the Alaska Property Tax Act prior to its repeal are being deprived of their property without due process of law by the Repealing Act. But these people did not lose their property because of the Repealing Act. They lost by virtue of the Alaska Property Tax Act which subjected their property to the tax. There was no denial of due process by the Alaska Property Tax Act. The validity of the Act was contested on that very ground. It was held valid as against that objection by the Circuit Court of Appeals in *Hess v. Mulaney*, 15 Alaska 40, 213 F.2d 635. Petition for Certiorari asserting violation of the Fifth Amendment was denied. *Luther C. Hess, et al., Pet. v. Karl F. Dewey, Commissioner of Taxation of the Territory of Alaska*, No. 266, 348 U.S. 836, 75 S.Ct. 50.

This contention with reference to the Fifth Amendment has been made before under similar circumstances and without success.

In *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 400, 60 S.Ct. 907, 916, Justice Douglas speaking for this court said:

"Appellant contends that the statutory classification \* \* \* and the application of the \* \* \* tax \* \* \* are improper under the Fifth Amendment. Its objection is not premised on lack of due process nor could it be in view of the elaborate machinery and procedure for the act's enforcement which Congress has provided. Rather appellant's objection is founded on its claim of discrimination. But the Fifth Amendment, unlike the Fourteenth, has no equal protection clause."

This court was equally specific in *Helvering v. Lerner Stores*, 314 U.S. 463, 468, 62 S.Ct. 341, 343, where Jus-

tice Douglas pointed out that the contention that the provisions of the act, there under consideration, run afoul of the Fifth Amendment was without merit and said that "a claim of unreasonable classification or inequality in the incidence of the application of a tax, raises no question under the Fifth Amendment which contains no equal protection clause."

Again in *Detroit Bank v. United States*, 317 U.S. 329, 337, 63 S.Ct. 297, 301, this court declared that "unlike the Fourteenth Amendment the Fifth Amendment contains no equal protection clause and provides no guaranty against discriminatory legislation by Congress."

### **The Florida Cases Cited by Petitioner on the Constitutional Question**

The five Florida cases cited by Petitioner are *Simpson, County Tax Collector, v. Warren*, 106 Fla. 688, 143 So. 602; *State v. Butts*, 111 Fla. 630, 149 So. 746; *Richie v. Wells*, 123 Fla. 284, 166 So. 817; *Ranger Realty Company v. Mills*, 102 Fla. 378, 136 So. 546; *St. Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738. These cases all deal with efforts of the legislature of Florida either directly or by delegation of authority, to waive penalties, interest and in some cases a portion of the tax levied and due under current and continuing tax statutes. The Florida Supreme Court at an early date held that such action violated Article IX, Sec. 2, of the 1885 Constitution of Florida as amended, providing for "a uniform and equal rate of taxation." Some of these cases also infer that the legislative act under review was in violation of the Fourteenth Amendment. The cases are far from specific and can hardly be considered



as authoritative except in construction of the constitution of Florida. In three of the five cases cited the legislative acts involved were held valid and the language of the decisions respecting acts which might or would be invalid if enacted are merely *dicta*. In one of the two cases cited invalidity was based principally on an invalid delegation of power.

There is no implication in any of these cases that either the state or federal constitution prohibits the legislature from repealing the tax laws of Florida or that such a repeal without a provision saving all accrued taxes would be a violation of the state or federal constitution.

In fact the opposite conclusion is reached by reading *Pensacola and Atlantic Railroad Co. v. State* (Fla. 1903) 45 Fla. 86, 33 So. 985, 110 American State Reports 67, decided before any of the Florida cases cited by Petitioner, and *Lee, Comptroller, v. Larry, Clerk*, (Fla. 1939) 192 So. 490, decided after the Florida cases cited by Petitioner. Both of these decisions lay down the rule that "the effect of the repealing statute is to obliterate the statute repealed as completely as if it had never been enacted, except for the purpose of those actions or suits that were commenced, prosecuted, and concluded while it was an existing law." In neither case is there any suggestion that the application of the rule in tax cases meets a constitutional obstacle.

#### **Other State Cases Cited by Petitioner on the Constitutional Question**

None of the other cases cited by Petitioner are helpful here. Not a single one of them involves the question

of the survival of taxes after repeal; or the construction of general and special saving statutes.

In *State v. Armstrong*, 17 Utah 166, 53 Pac. 981, the Utah Supreme Court was confronted with a provision of the State Constitution directing that—"all property in the state not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law." The constitution then exempted certain property not including the property in question. The court cited an earlier decision of Utah construing this constitutional provision to mean—"that no power should exist in the state government to grant exemptions other than those mentioned in the constitution."

*Sheppard, et al., v. Hidalgo County, et al.*, 125 Tex. 294, 83 S.W.2d 649, 653, held invalid an act of the legislature releasing inhabitants of a single county in Texas from payment of state taxes levied on their property for a period of twenty-five years in the future. The court held the act in contravention of a provision of the Texas Constitution requiring that "all property in this state whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value."

*Lincoln Mfg. and Trust Co. v. Davis*, 76 Kan. 639, 92 Pac. 707, is directly against Petitioner's contention. In that case the Kansas Supreme Court in 1907 held that "the legislature may, without violating the principle that the rate of assessment of taxation must be uniform and equal, allow a remittance of a part of the tax against delinquent lands which have already remained unsold for three years."

In *State ex rel. Coe v. Tyler*, 48 Conn. 145, a Con-

necticut town meeting had sought to lower the assessed valuation placed on the property of a local manufacturing plant by the "Board of Relief" the statutory agency authorized to review assessments. The court held that action of the town was contrary to statute and void.

The Supreme Court decision in *Huntington v. Worthen and Little Rock and Fort Smith Railway*, 120 U.S. 97, 30 L.ed. 591, construes and applies a provision of the Constitution of Arkansas providing that "all laws exempting property from taxation other than as provided [by the Arkansas Constitution], shall be void." The Michigan case of *Thompson v. Auditor General*, 261 Mich. 624, 247 N.W. 360, cites and follows earlier decisions of the Supreme Court of Michigan holding that the 1908 constitution of that state prohibits efforts of the legislature to remit a part of a tax levy on some but not all property levied upon. In *State ex rel. Matteson v. Luecke*, 194 Minn. 246, 260 N.W. 206, the court held that the state constitution of Minnesota was violated by an effort of the legislature to permit delinquent taxpayers for certain specified years, to discharge their obligation by payment of a portion of the tax due without interest or penalty. The Idaho case of *State ex rel. Anderson v. Rayner*, 60 Ida. 706, 96 P.2d 244, concerns excise taxes and has no application whatever.

In *San Bernardino County v. Way*, 18 Cal.2d 647, 117 P.2d 354, the Supreme Court of California held that the California State Constitution had been construed in earlier decisions as prohibiting legislative remission of taxes. Nothing was said in the decision to indicate that the court had departed from the earlier

holdings in *People v. Bank of San Luis Obispo* (1910) 112 Pac. 866, and *Coombs v. Franklin* (1931) 1 P.2d 992, holding that the repeal of a statute without a general or special saving provision destroys all rights existing under it which have not become final.

*Clements v. Peerless Woolen Mills*, 197 Ga. 296, 29 S.E.2d 175, involves the statutory right of the Tax Commissioner to collect commissions on taxes remitted by law and has no application here. *Opinion of the Justices, No. 89*, 251 Ala. 96, 36 So.2d 480, advised the Governor of Alabama respecting the application of a state constitutional provision prohibiting remission or release or application to the state "except doubtful claims." No such situation is involved here.

#### **The Montana Cases Cited by Petitioner on the Constitutional Question**

The fallacy of Petitioner's position is explicitly demonstrated by Petitioner's citation of the Montana case of *State ex rel. Kain v. Fischl, County Treasurer*, 94 Mont. 92, 20 P.2d 1057 (1933). Montana like Texas and many other states has a constitutional provision prohibiting the legislature from remitting, releasing, or postponing an obligation of the state or county. The Montana legislature authorized property owners whose property had been sold to the county for delinquent taxes, penalty and interest, to redeem their property without payment of penalty or interest, in cases (1) where the county had made no sale or assignment of the property, and (2) redemption was made on or before November 30, 1953. The act was held in violation of the provision of the Montana constitution above mentioned.



The court also pointed out that the Montana act violated the Equal Protection Clause of the Fourteenth Amendment because delinquent taxpayers were "of the same class" and the act required full payment from some delinquents and not from others, since the act permitted redemption only by "those whose property had been struck off to the county \* \* \* and no assignment of the certificate of sale had been made \* \* \* and who paid their delinquent taxes on or before November 30, 1953." Other delinquents were denied the benefits of the act.

But the Montana court saw no similar violation of the Fourteenth Amendment in the earlier case of *Westchester Fire Insurance Co. v. Sullivan, County Treasurer*, (1912) 121 Pac. 472, 473, where it held that the repeal of a tax statute "had the effect of blotting it out as completely as if it had never existed" and that taxes due under the act at the time of its repeal were not required to be paid. The court negatived a violation of the Fourteenth Amendment by stating:

"There is no suggestion by Counsel on either side that the repealing act violates any provision of the Constitution touching the taxation of property, \* \* \*."

The same court that announced the decision in *State ex rel. Kain v. Fischl, County Treasurer, supra*, upon which Petitioner relies, presided over by the same Chief Justice and with the same Associate Justices participating, cited *Westchester Fire Insurance Co. v. Sullivan, County Treasurer, supra*, with approval in *Continental Supply Company v. White* (1932) 12 P.2d 569, 573; *State ex rel. Snidow v. State Board of Equalization* (1933) 17 P.2d 68, 72; *Standard Oil Company*

of *California v. Idaho Community Oil Company* (1933) 27 P.2d 173, 176, and *State v. Wilds* (1935) 41 P.2d 8, 9.

Finally the Montana case of *State ex rel. Kain v. Fischl, County Treasurer, supra*, cited by Petitioner, was specifically overruled on the specific point of the violation of the Fourteenth Amendment by *State ex rel. Sparling v. Hitsam, County Treasurer* (Mont. 1935) 44 P.2d 747, also cited by Petitioner on page 14 of its Brief.

### Second Question Presented

Petitioner's second question as presented on page 16 of its Brief is identical with the question considered as determination by the Circuit Court in this case, although couched in slightly different words. In substance it challenges the holding below that "the saving's section of the Repealing Act overrides the General Saving Statute."

It is difficult to improve on the reasoning advanced by the court below in support of its decision on this point. It is impossible to challenge it successfully. The Circuit Court after quoting the Repealing Act and the General Saving Statute of Alaska (Appendix A and B) held that "the saving section of the Repealing Act overrides the General Saving Statute" (R. 82). In support of this conclusion the Appellate Court points to the words in the title of the Repealing Act "excepting from repeal certain taxes and tax exemptions" (R. 82) and states as follows:

"In *John J. Sesnon Co. v. United States*, 9 Cir. 1910, 182 F. 573, 576, certiorari denied, 1911, 220

U.S. 609, a case that came to this court from Alaska, Judge Morrow observed:

“ ‘Where doubt exists as to the meaning of the statute, the title may be looked to for aid in its construction.’ ”

“In the repealing statute before us, the participial phrase, ‘*excepting* from repeal’ certain taxes, etc., without any qualification to the word ‘excepting,’ indicates that the term is to be taken in its ordinary restrictive sense.

“Considering the repealing act as a whole, we should bear in mind that being a special or, in the words of the Supreme Court, a ‘*specific*’ enactment, it qualifies and furnishes exceptions to the *general* repeal law of Alaska—Section 19-1-1, dealing with the ‘Effect of repeals or amendments,’ *supra*.

“More than threescore and ten years ago, this rule was already ‘well settled’ in Anglo-American law.

“In *Townsend v. Little*, 1883, 109 U.S. 504, 512, the court observed:

“ ‘According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to priority of enactment, may subsist together, *the specific qualifying and supplying exceptions to the general*, this provision for the execution of a *particular* class of deeds is *not* controlled by the law of the territory requiring deeds *generally* to be executed with two witnesses.’ [American and English authorities cited.] [Emphasis supplied.]

“The principle is merely a corollary of the familiar maxim, *Expressio unius est exclusio alterius*,

as was pointed out in *Rybolt v. Jarrett*, 4 Cir., 1940, 112 F.2d 642, 645:

“ ‘There is some force here in the maxim *Expressio unius est exclusio alterius*. When in a statute of such clean cut restrictive force, the legislature undertook to make certain explicit exceptions, it seems a fair implication that the legislature intended to exclude other exceptions, and thus to make the statute say what it means and mean what it says.’ ”

“ ‘Similarly, in *Jones v. H. D. & L. K. Crosswell*, 4 Cir., 1932, 60 F.2d 827, 828, it was said:

“ ‘Being exceptions carved out of the general rule, intangible property not *specifically* mentioned as being tangible property must be excluded. The maxim “*expressio unius est exclusio alterius*” applies. It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed. [Many cases cited.]’ [Emphasis supplied.] ”

“ ‘The principle is well established in California. In *Los Angeles Brewing Company v. City of Los Angeles*, 1935, 8 C.A.2d, 391, 398, cited in the Stanford Law Review of January, 1949, Volume 1, Number 2, Page 371, Note 2, the court remarked:

“ ‘As section 22 or Article XX [of the Constitution of California] was adopted last, as it is special in dealing with this subject of the control, licensing and regulating of “the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquor within the state” and as it shows an intention to remove the licensing for revenue of those so dealing in intoxicating liquors from the realm of a municipal affair to that of a matter of general state-wide concern, its provisions



must be held to control over those of section 6 of article XI of the Constitution [authorizing cities and towns to legislate "in respect to municipal affairs"] and vest in the state the exclusive and sole right to license for the purpose of revenue those engaged in the business of manufacturing, dealing in or handling intoxicating liquors.' [Emphasis supplied.]"

The court then proceeds to a discussion of what it terms "a leading and oft quoted decision that applies the venerable maxim to the precise question that we are here considering; namely, the conflict between the general repeal provision and a special repeal provision." (R. 84).

The reference is to *State v. Showers*, 1885, 34 Kan. 269, 8 Pac. 474, 476-477, and the Appellate Court quotes extensively from the decision in that case (R. 84, 85, 86) and concludes this phase of its opinion in the following words:

"Both on reason and authority, therefore, we hold that §2 of Chapter 22 of 1953, the repealing statute, means precisely what it says; namely, that Chapter 10 of the Session Laws of Alaska, 1949, shall 'be and it is hereby repealed,' except 'any taxes which have been levied and assessed by any municipality, school or public utility district,' etc., including such taxes levied and assessed for the 'current fiscal year'—taxes which are not in controversy here, and which alone are saved from repeal.

"With the above exclusive exception Chapter 10, Session Laws of Alaska, 1949, is no longer of any

force or effect—as to past, present, or future years.” (R. 87).<sup>1</sup>

### **The Third Question Presented**

Petitioner, by its third question presented, asks this Court to consider as evidence in this case, House Bill No. 3 of the Twenty-first Session of the Alaska Legislature, which was offered in evidence in the trial court during the oral argument on Respondent's Motion to Dismiss and was rejected by the trial court (R. 46, 47). The Circuit Court found no prejudicial error (R. 89). Petitioner also asks this court to consider as evidence in this case Senate Bill No. 5 of the Alaska Legislature which was *not* offered in evidence in the trial court (R. 87). In the Appellate Court Petitioner assigned this action as error (R. 72) but in this court Petitioner asks that the documents be considered although not in the record and although Respondents have had no opportunity to cross-examine or rebut by introducing other documents and statements which are available. The Appellate Court found no error in the rejection and further concluded that the proffered documents shed no light on the controversy not available from an inspection of the legislative journals which may be judicially noticed (R. 87, 88, 89). Respondents agree with the Appellate Court's conclusion.

This case is not open here for the reception of evidence. In fact it never was in the trial court either. The

<sup>1</sup> In further support of its position the Appellate Court calls attention to *Wilmington Trust Co. v. United States*, Del. 1928, 28 F.2d 205, 208, holding “that nothing should be saved except what they [the legislature] expressly stated should be saved”; and also to *Ainsworth v. Bryant*, 1949 34 Cal.2d 465, 472, 473, 211 P.2d 564, 568; 50 Am. Jur. Sec. 528, page 535; 82 C.J.S. Sec. 440(a) page 1015, dealing with the general application of the maxim “*expressio unius*.”

trial court granted a Motion to Dismiss the complaints and the Territory elected to stand on the pleadings and appeal (R. 80). The documents clearly cannot be considered here and if they were the decision of the case would not be affected. The legislature did not want to "abrogate and repeal all accrued and unpaid taxes" as provided in House Bill No. 3 as introduced. It wanted to except from the repeal and save taxes levied in the past or to be levied in the future pursuant to the Act repealed, by municipalities, school and public utility districts. The Legislature amended the bill accordingly.

### **The Rules of Statutory Construction Advanced by Petitioner**

Petitioner sets forth in its brief what it terms "four fundamental canons of [statutory] construction."

#### ***The First Rule (Pet. Br. p. 16)***

The first rule of construction advanced is that "when an act is susceptible of one or more constructions, one of which is of doubtful validity, the courts should adopt the valid interpretation."

But Petitioner assumes that the act in question is of doubtful validity. By the first question presented in its brief (Br. 2) Petitioner asserts that the Repealing Act as construed below is unconstitutional. If it is unconstitutional it must fall and the court will not give it a construction not warranted by its terms in order to avoid such a result.

The rule of construction asserted by Petitioner may be correct but it has no application here. The Repealing Act by its plain terms saves some taxes and not others. If this offends the Constitution then the Act is

void and the courts are powerless to change it. Rewriting the Act is a function of the Legislature. The cases cited by Petitioner may support the rule of construction stated by Petitioner but neither they nor the rule are applicable here.

### ***The Second Rule (Pet. Br. p. 16)***

The second rule of construction advanced by Petitioner is that "an unjust result is to be avoided in statutory construction." But who is to determine what is just and what is unjust. Many people in many times have felt that many legislative enactments are "unjust." Counsel for Petitioner on behalf of another branch of the Alaska territorial government contends that the Act of the Alaska Territorial Legislature was "unjust" and that the courts should change it.

Counsel for Petitioner seeks to justify his position by asserting that the Repealing Act is "ambiguous." An ambiguous statute is one that on its face is subject to two meanings. The Repealing Act repealed the Alaska Property Tax Act but made the repeal inapplicable to certain taxes and tax exemptions. This is what it says and this is what it means. No ambiguity can be detected in this respect. The Circuit Court held that "the repealing statute, means precisely what it says" (R. 87) and that "the saving section of the repealing act overrides the general saving statute" (R. 82). It is this last holding of which Petitioner complains. It is the legal effect of the Repealing Act and not its grammatical construction which Petitioner seeks to avoid. It is true that both the trial and Circuit Courts applied well-established rules of statutory construction including recourse to the title which by reason of section 8



of the *Alaska Organic Act*, Vol. 1, P. 55, ACLA 1949, is a part of the Act itself. This does not mean that they found the Act ambiguous.

The dissenting opinion finds the Act ambiguous "in its meaning and in the motives inspiring its enactment" (R. 91). The motives which inspired the legislature to enact the Repealing Act are not on review here. The construction placed on the Act by the dissenting opinion is treated elsewhere herein.

### ***The Third Rule (Pet. Br. p. 19)***

The third rule of construction advanced by the Petitioner is that "tax remissions are strictly construed and founded upon clear language."

But the Repealing Act does not purport to "remit" any taxes and the authorities cited by the Petitioner in support of the rule have no application. The Repealing Act repeals a tax statute and under the common law the taxes due and unpaid on the date of the repeal, unless saved, fell with the repeal and in the words of the Appellate Court are "no longer of any force, or effect—as to past, present or future years" (R. 87).

### ***The Fourth Rule (Pet. Br. p. 19)***

The fourth rule asserted by Petitioner is that "a special saving clause does not override a general saving statute in the absence of express terms or *clear* implication" (B. 19). The cases cited by Petitioner do not support the rule and furthermore they construe the *Federal Saving Statute*, Sec. 29 and 109, Title 1, U.S.C.A., which is quite different from the *Alaska Saving Statute*, Sec. 19-1-1 A.C.L.A. 1949, with which we

are concerned here. The Federal Saving Statute reads as follows:

**"Repeal of statutes as affecting existing liabilities. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, *unless the repealing Acts shall so expressly provide*, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."** (Emphasis supplied)

We have emphasized the words "*unless the repealing Act shall so expressly provide*." No similar words are found in the Alaska Saving Statute. They are not missing by accident either. Prior to 1947 Alaska had a General Saving Statute identical with the Federal Saving Statute. See Chap. 7 SLA 1929. The 1929 act was repealed and the present saving statute substituted for it by Chap. 18, SLA 1947 now found in the Alaska Compiled Laws Annotated of 1949 as Sec. 19-1-1 thereof. Therefore, cases cited by Petitioner construing the Federal act are not helpful here. The contrast has been frequently pointed out by the Federal Courts.

*State v. Showers* (Kan. 1885) 34 Kan. 269, 8 Pac. 474, quoted from at length in the decision of the Appellate Court in this case construes the General Saving Statute of Kansas which is identical in effect with the General Saving Statute of Alaska.

In *United States v. Chicago, St. Paul, Minneapolis & Omaha Railway* (D.C. Minn. 1907) 151 Fed. 84, the court after quoting both the Federal Saving Statute and the Kansas Saving Statute (which is identical in

effect with the Alaska Saving Statute) said on page 90 of its decision:

"It will be noted that the words of the Kansas statutes above quoted are far from identical with those of the federal statutes now being considered. The Kansas statute of construction contains the words 'unless such construction would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute,' and thus leaves open to the courts the application of the recognized canons of construction to ascertain from the language of the repealing statute and the context of the statute the intent of the Legislature. There are no such words in section 13, and the Kansas statute does not provide, as does section 13, that the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability under the repealed statute, unless the repealing act shall so expressly provide. Under the Kansas statute it was not necessary to expressly provide in the repealing act that a certain class of offenders shall be released from prosecutions, but under the federal statute it is imperative that there should be such an express provision. The words 'unless the repealing act shall so expressly provide' differentiates the two statutes, and in my opinion make the Kansas case of little, if any, value in determining the question now under consideration."

See also *Great Northern Ry. Co. v. U. S.* (8th Cir. 1907) 155 Fed. 945; *U. S. v. Chicago, St. Paul, Minneapolis & Omaha Railway* (D.C. Minn. 1907) 151 Fed. 84; *U. S. v. Standard Oil Co.* (D.C. Ill. 1907) 148 Fed. 719, where *State v. Showers* was quoted and the General Saving Statute and Kansas contrasted from the

Federal Saving Statute. This is the same contrast which exists between the Federal and Alaska General Savings Statutes.

But there is another difficulty with the rule asserted by Petitioner. Petitioner contends that a special saving clause does not override a general saving statute in the absence of expressed terms or *clear* implication. *Hertz, Collector v. Woodman* (1910) 218 U.S. 205, 30 S.Ct. 621, and *Great Northern Ry. Co. v. U. S.* (1908) 208 U.S. 452, 28 S.Ct. 313, are cited in support of the rule. Both of these cases state the rule differently with respect to the extent of the implication required. Both say that since the Federal Saving Statute "has only the force of a statute" its provisions cannot justify a disregard of the will of Congress as manifested, either expressly or by *necessary* implication, in a subsequent act. But that the provisions of the Federal Saving Statute "are to be treated as if incorporated in and as a part of subsequent enactments, and therefore, under the general principle of construction requiring, if possible, that effect be given to all parts of a law," the Federal Saving Statute "must be enforced unless, either by express declaration or *necessary* implication," arising from the terms of the law as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions of [the Federal Saving Statute].

This identical language is found in both cases. "Clear" and "necessary" are not interchangeable words.

Finally Petitioner on page 23 of its brief makes this strange statement—

"Thus it is the position of the Territory of Alas-



ka that the 'exception' found in Chap. 22 SLA 1953, is prospective, saving nothing that presently exists."

The "exception" referred to is Section 2(a) of the Repealing Act applies to two separate set of circumstances as follows: "(1) Sec. 1 of this act shall not be applicable to

'any taxes which have been levied and assessed by any municipality, school, or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended,'

or

'which are levied and assessed during the current fiscal year of such municipality, school or public utility district.'"

To say that the saving of "any taxes which have been levied and assessed \* \* \* under the provisions of Chap. 10 \* \* \*" is not retrospective is in effect to deny the force of the English language. By the same token the second part of the exception dealing with taxes "which are levied and assessed during the current fiscal year" definitely applies prospectively.

### **Other Questions**

The trial court ruled that no personal action could be maintained against these respondents for the taxes in question and that "neither the tax nor the remedy survive the repeal" and that "in view of this decision the question of the Statute of Limitations need not be considered." *Territory of Alaska v. American Can Co.*, 16 Alaska 71, 82, 137 F.Supp. 181. The trial court's holding that no personal action would lie and that no remedy survived the repeal was specified as error on appeal to

the Circuit Court (R. 71, 82). The Circuit Court stated that the question of personal liability and the survival of a remedy were presented by the appeal but since the taxes were no longer in force or effect the other questions were not passed upon. These questions are not covered in the Petition for Certiorari and are not before this Court. Neither Petitioner nor respondents have asked for their consideration or determination. They are meritorious. 55-2-7-ACLA 1949, *City of Yakutat v. Libby, McNeill & Libby*, 13 Alaska 378, 98 F. Supp. 101, *Bridges v. United States*, 346 U.S. 209, 97 L.ed. 1557, 73 S.Ct. 1055, *Schmuck v. Hartman*, 222 Pa. 190, 195, 70 Atlantic 1091, 1092.

### CONCLUSION

The Judgment should be affirmed.

Respectfully submitted,

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**APPENDIX A**

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**SESSION LAWS OF ALASKA, 1953****Chapter 22****AN ACT****(H.B. 3)**

To repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

Section 2. Section 1 of this Act shall not be applicable to:

- (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and
- (b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval.

**APPENDIX B**

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**ALASKA COMPILED LAWS ANNOTATED, 1949****TITLE 19**

**§19-1-1. Effect of repeals or amendments.** The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished; but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. [L. 1947, ch. 18, §1, p. 60]



**CLASS OF SERVICE**

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

# WESTERN UNION

1201

**SYMBOLS**

DL=Day Letter

NL=Night Letter

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VLT=Int'l Victory Ltr.

W. P. MARSHALL, PRESIDENT

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.PRB637 P

R.SEE284 24/23 NL COLLECT-JUNEAU ALASKA 31

ESKIL ANDERSON:

105 WEST SIXTH SPOKANE WASH:

REURTEL PAYMENTS 1950 PROPERTY TAX NOT BEING ACCEPTED  
PENDING DECISION BY CIRCUIT/COURT OF APPEAL OF DECISION OF  
DISTRICT COURT IN FAIRBANKS:

M P MULLANEY TAX COMMISSIONER:

APPENDIX C

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THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE